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FEDERAL REGISTER

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Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7207]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Charitable Contributions Deduction

On April 2, 1971, there was published in the FEDERAL REGISTER (36 F.R. 6082) a notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 201(a), relating to charitable contributions, and section 201(f), relating to bargain sales to a charitable organization, of the Tax Reform Act of 1969 (83 Stat. 549, 564). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 1.170A–1, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (a)(1), by revising paragraph (f), by revising the heading of paragraph (h), by revising subparagraphs (1), (6), and (9) of paragraph (h), and by adding new subparagraphs (10) and (11) to paragraph (h) to read as set forth below.

PAR. 2. Section 1.170A–3, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (c) of example (2) in paragraph (d) to read as set forth below.

PAR. 3. Section 1.170A–4, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising that part of paragraph (a) that follows subparagraph (3) thereof, by revising paragraphs (b) (1) and (3), (c) (2)(i) and (3), and (e), and by revising example (1), and examples (5) through (10), in paragraph (d) to read as set forth below.

PAR. 4. Section 1.170A–5, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising examples (1), (2), (5), and (7) in paragraph (b), to read as set forth below.

PAR. 5. Section 1.170A–6, as set forth in paragraph 6 of the notice of proposed rule making, is revised to read as set forth below.

PAR. 6. Section 1.170A–7, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraphs (a) (1) and (2), (b), and (c) to read as set forth below.

PAR. 7. Section 1.170A–8, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraphs (a), (b), and (d)(3), by revising examples (5) and (8) in paragraph (f), by revising paragraph (c) in example (4) in paragraph (f), by revising paragraph (d) in example (12) in paragraph (f), and by adding new examples (13), (14), and (15) in paragraph (f) to read as set forth below.

PAR. 8. Section 1.170A–10, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising paragraph (a), that part of paragraph (b)(1) that precedes the examples therein, paragraph (b)(2)(i)(*b*), and that part of paragraph (c)(2) that follows subdivision (i) thereof, to read as set forth below.

PAR. 9. Section 1.170A–11, as set forth in paragraph 6 of the notice of proposed rule making, is changed by revising that part of paragraph (c)(1) that follows subdivision (i) thereof and precedes the example therein, to read as set forth below.

PAR. 10. Section 1.1011–2, as set forth in paragraph 17 of the notice of proposed rule making, is changed by revising paragraphs (a) and (b), examples (1), and (3) through (7), in paragraph (c), and paragraph (c) of example (8) in paragraph (c), to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: September 26, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 201(a), relating to charitable contributions, and section 201(f), relating to bargain sales to a charitable organization, of the Tax Reform Act of 1969 (Public Law 91–172, 83 Stat. 549, 564), such regulations are amended as follows:

PARAGRAPH 1. Section 1.61–3 is amended by revising paragraph (a) to read as follows:

§ 1.61–3 Gross income derived from business.

(a) *In general.* In a manufacturing, merchandizing, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income, and without subtraction of selling expenses, losses, or other items not ordinarily used in computing cost of goods sold. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer. For special rules for determining cost of goods sold in the case of property contributed to a charitable organization, see paragraph (c)(4) of § 1.170A–1.

* * * * *

PAR. 2. Section 1.170 is amended by revising the heading of such section, subsection (e) of section 170, and the historical note to read as follows:

§ 1.170 Statutory provisions; charitable, etc., contributions and gifts (before amendment by Tax Reform Act of 1969).

* * * * *

(e) *Special rule for charitable contributions of certain property.* The amount of any charitable contribution taken into account under this section shall be reduced by the amount which would have been treated as gain to which section 617(d)(1), 1245(a), or 1250(a) applies if the property contributed had been sold at its fair market value (determined at the time of such contribution).

* * * * *

[Sec. 170 as amended by sec. 1, Act of Aug. 7, 1956 (Public Law 1022, 84th Cong., 70 Stat. 1117); secs. 10, 11, and 12, Technical Amendments Act 1958 (72 Stat. 1609–10); sec. 7(a), Act of Sept. 14, 1960 (Public Law 86–779, 74 Stat. 1002); sec. 13(d), Rev. Act 1962 (76 Stat. 1034); sec. 2, Act of Oct. 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 209 and 231(b), Rev. Act 1964 (78 Stat. 43, 100); sec. 1(b)(1), Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 762); as in effect before amendment by secs. 101(j)(2), 201(a)(1) and (2)(A), and 201(h), Tax Reform Act 1969 (83 Stat. 526, 549, 558, 565)]

PAR. 3. Immediately after § 1.170 the following new section is inserted:

§ 1.170–0 Effective dates.

Except as otherwise provided in this section, the provisions of § 1.170 and §§ 1.170–1 through 1.170–3 are applicable to contributions paid in taxable years beginning before January 1, 1970, and all references therein to sections of the Code are to sections of the Internal Revenue Code of 1954 prior to the amendments made by section 201(a) of the Tax Reform Act of 1969 (83 Stat. 549). Except as otherwise provided therein, §§ 1.170A through 1.170A–11 are applicable to contributions paid in taxable years beginning after December 31, 1969. In a case where a provision in §§ 1.170A through 1.170A–11 is applicable to a contribution paid in a taxable year beginning before January 1, 1970, such provision shall apply to the contribution and §§ 1.170–1 through 1.170–3 shall not apply to the contribution.

PAR. 4. The headings of § 1.170–1 and § 1.170–2 are revised to read as follows:

§ 1.170–1 Charitable, etc., contributions and gifts; allowance of deduction (before amendment by Tax Reform Act of 1969).

* * * * *

§ 1.170–2 Charitable deductions by individuals; limitations (before amendment by Tax Reform Act of 1969).

* * * * *

PAR. 5. Section 1.170–3 is amended by revising the heading thereof and paragraph (a) to read as follows:

§ 1.170–3 Contributions or gifts by corporations (before amendment by Tax Reform Act of 1969).

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year computed without regard to:

(1) The deduction for charitable contributions,

(2) The special deductions for corporations allowed under part VIII (except section 248), subchapter B, chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172,

(4) The special deduction for Western Hemisphere trade corporations under section 922, and

(5) Any capital loss carryback to the taxable year under section 1212(a)(1).

A contribution by a corporation to a trust, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals is deductible only if the contribution is to be used in the United States or its possessions for those purposes. See section 170(c)(2). For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114 (relating to sports programs conducted for the American National Red Cross) are not to be considered contributions or gifts. For reduction or disallowance of certain charitable, etc., deductions, see paragraphs (c)(2), (e), and (f) of § 1.170–1.

* * * * *

PAR. 6. There are inserted immediately after § 1.170–3 the following new sections:

§ 1.170A Statutory provisions; charitable, etc., contributions and gifts (after amendment by Tax Reform Act of 1969).

SEC. 170. *Charitable, etc., contributions and gifts*—(a) *Allowance of deduction*—(1) *General rule.* There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

(2) *Corporations on accrual basis.* In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) The board of directors authorizes a charitable contribution during any taxable year, and

(B) Payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Future interests in tangible personal property.* For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) *Percentage limitations*—(1) *Individuals.* In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) *General rule.* Any charitable contribution to—

(i) A church or a convention or association of churches,

(ii) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) An organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) An organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) A governmental unit referred to in subsection (c)(1),

(vi) An organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function contituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) A private foundation described in subparagraph (E), or

(viii) An organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) *Other contributions.* Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 20 percent of the taxpayer's contribution base for the taxable year, or

(ii) The excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (D)).

(C) *Unlimited deduction for certain individuals.* Subject to the provisions of subsections (f)(6) and (g), the limitations in subparagraphs (A), (B), and (D), and the provisions of subsection (e)(1)(B), shall not apply, in the case of an individual for a taxable year beginning before January 1, 1975, if in such taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax (determined without regard to chapter 2, relating to tax on self-employment income) paid during such year in respect of such year or preceding taxable years, exceeds the transitional deduction percentage (determined under subsection (f)(6) of the taxpayer's taxable income for such year, computed without regard to—

(i) This section,

(ii) Section 151 (allowance of deductions for personal exemption), and

(iii) Any net operating loss carryback to the taxable year under section 172.

In lieu of the amount of income tax paid during any such year, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year. In the case of a separate return for the taxable year by a married individual who previously filed a joint return with a former deceased spouse for any of the 10 preceding taxable years, the amount of charitable contributions and taxes paid for any such preceding taxable year, for which a joint return was filed with the former deceased spouse, shall be determined in the same manner as if the taxpayer had not remarried after the death of such former spouse.

(D) *Special limitation with respect to contributions of certain capital gain property*—

(i) In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions.

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this subparagraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(E) *Certain private foundations.* The private foundations referred to in subparagrph (A)(vii) and subsection (e)(1)(B) are—

(i) A private operating foundation (as defined in section 4942(j)(3)),

(ii) Any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) A private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than 1 year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) *Contribution base defined.* For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) *Corporations.* In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 5 percent of the taxpayer's taxable income computed without regard to—

(A) This section,

(B) Part VIII (except section 248),

(C) Any net operating loss carryback to the taxable year under section 172,

(D) Section 922 (special deduction for Western Hemisphere trade corporations), and

(E) Any capital loss carryback to the taxable year under section 1212(a)(1).

(c) *Charitable contribution defined.* For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) Created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) Organized in the United States or any of its possessions, and

(B) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contributions" also means an amount treated under subsection (h) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) *Carryovers of excess contributions*—(1) *Individuals*—(A) *In general.* In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent (30 percent, in the case of a contribution year beginning before January 1, 1970) of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) In the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) *Special rule for net operating loss carryovers.* In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) *Corporations*—(A) *In general.* Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) The excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribtuion not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) *Special rule for net operating loss carryovers.* For purposes of subparagraph (A), the excess of—

(i) The contributions made by a corporation in a taxable year to which this section applies, over

(ii) The amount deductible in such year under the limitation in subsection (b)(2), shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increasing a net operating loss carryover under section 172 to a succeeding taxable year.

(e) *Certain contributions of ordinary income and capital gain property*—(1) *General rule.* The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) The amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) In the case of a charitable contribution—

(i) Of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) To or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

50 percent (62½ percent, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) *Allocation of basis.* For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary or his delegate.

(f) *Disallowance of deduction in certain cases and special rules*—(1) *In general.* No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) *Contributions of property placed in trust*—

(A) *Remainder interest.* In the case of property transferred in trust no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) *Income interests, etc.* No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) *Denial of deduction in case of payments by certain trusts.* In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) *Exception.* This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) *Denial of deduction in case of certain contributions of partial interests in property*—(A) *In general.* In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) *Exceptions.* Subparagraph (A) shall not apply to a contribution of—

(i) A remainder interest in a personal residence or farm, or

(ii) An undivided portion of the taxpayer's entire interest in property.

(4) *Valuation of remainder interest in real property.* For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate.

(5) *Reduction for certain interest.* If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) Shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) In the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) *Partial reduction of unlimited deduction*—(A) *In general.* If the limitations in subsections (b)(1)(A) and (B) do not apply because of the application of subsection (b)(1)(C), the amount otherwise allowable as a deduction under subsection (a) shall be reduced by the amount by which the taxpayer's taxable income computed without regard to this subparagraph is less than the transitional income percentage (determined under subparagraph (C)) of the taxpayer's adjusted gross income. However, in no case shall a taxpayer's deduction under this section be reduced below the amount allowable as a deduction under this section without the applicability of subsection (b)(1)(C).

(B) *Transitional deduction percentage.* For purposes of applying subsection (b)(1)(C), the term "transitional deduction percentage" means—

(i) In the case of a taxable year beginning before 1970, 90 percent, and

(ii) In the case of a taxable year beginning in—

	Percent
1970	80
1971	74
1972	68
1973	62
1974	56

(C) *Transitional income percentage.* For purposes of applying subparagraph (A), the term "transitional income percentage" means, in the case of a taxable year beginning in—

	Percent
1970	20
1971	26
1972	32
1973	38
1974	44

(g) *Application of unlimited charitable contribution deduction*—(1) *Allowance of deduction for taxable years beginning after December 31, 1963.* If the taxable year begins after December 31, 1963—

(A) Subsection (b)(1)(C) shall apply only if the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes); and

(B) For purposes of subsection (b)(1)(C), the amount of the charitable contributions for the taxable year (and for all prior taxable years beginning after December 31, 1963) shall be determined without the application of subsection (d)(1) and solely by reference to charitable contributions described in paragraph (2).

If the taxpayer elects to have subsection (b)(1)(C) apply for the taxable year, then for such taxable year subsection (a) shall apply only with respect to charitable contributions described in paragraph (2), and no amount of charitable contributions made in the taxable year or any prior taxable year may be treated under subsection (d)(1) as having been made in the taxable year or in any succeeding taxable year.

(2) *Qualified contributions.* The charitable contributions referred to in paragraph (1) are—

(A) Any charitable contribution described in subsection (b)(1)(A);

(B) [Deleted.]

(C) Any charitable contribution, not described in subsection (b)(1)(A), to an organization described in subsection (c)(2) which meets the requirements of paragraph (3) with respect to such charitable contributions; and

(D) Any charitable contribution payment of which is made on or before the date of the enactment of the Revenue Act of 1964 [February 26, 1964].

(3) *Organizations expending at least 50 percent of donor's contributions.* An organization shall be an organization referred to in paragraph (2)(C), with respect to any charitable contribution, only if—

(A) Not later than the close of the third year after the organization's taxable year

in which the contribution is received (or before such later time as the Secretary or his delegate may allow upon good cause shown by such organization), such organization expends an amount equal to at least 50 percent of such contribution for—

(i) The active conduct of the activities constituting the purpose or function for which it is organized and operated,

(ii) Assets which are directly devoted to such active conduct,

(iii) Contributions to organizations which are described in subsection (b)(1)(A) or in paragraph (2)(B) [sic] of this subsection, or

(iv) Any combination of the foregoing; and

(B) For the period beginning with the taxable year in which such contribution is received and ending with the taxable year in which subparagraph (A) is satisfied with respect to such contribution, such organization expends all of its net income (determined without regard to capital gains and losses) for the purposes described in clauses (i), (ii), (iii), and (iv) of subparagraph (A).

If the taxpayer so elects (at such time and in such manner as the Secretary or his delegate by regulations prescribes) with respect to contributions made by him to any organization, then, in applying subparagraph (B) with respect to contributions made by him to such organization during his taxable year for which such election is made and during all his subsequent taxable years, amounts expended by the organization after the close of any of its taxable years and on or before the 15th day of the third month following the close of such taxable year shall be treated as expended during such taxable year.

(4) *Disqualified transactions.* An organization shall be an organization referred to in subparagraph (B) [sic] or (C) of paragraph (2) only if at no time during the period consisting of the organization's taxable year in which the contribution is received its 3 preceding taxable years, and its 3 succeeding taxable years, such organization—

(A) Lends any part of its income or corpus to,

(B) Pays compensation (other than reasonable compensation for personal services rendered) to,

(C) Makes any of its services available on a preferential basis to,

(D) Purchases more than a minimal amount of securities or other property from, or

(E) Sells more than a minimal amount of securities or other property to,

the donor of such contribution, any member of his family (as defined in section 267(c)(4)), any employee of the donor, any officer or employee of a corporation in which he owns (directly or indirectly) 50 percent or more in value of the outstanding stock, or any partner or employee of a partnership in which he owns (directly or indirectly) 50 percent or more of the capital interest or profits interest. This paragraph shall not apply to transactions occurring on or before the date of the enactment of the Revenue Act of 1964 [February 26, 1964].

(h) *Amounts paid to maintain certain students as members of taxpayer's household*—(1) *In general.* Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) A member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) A full-time pupil or student in the 12th or any lower grade at an educational institution (as defined in section 151(e)(4)) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) *Limitations*—(A) *Amount.* Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) *Compensation or reimbursement.* Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) *Relative defined.* For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152 (a).

(4) *No other amount allowed as deduction.* No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(i) *Disallowance of deduction in certain cases.* For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (64 Stat. 996; 50 U.S.C. 790).

(j) *Other cross references.* (1) For charitable contributions of estates and trusts, see section 642(c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b).

(6) For treatment of gifts for benefit of the library of the Post Office Department as gifts to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U.S.C. 393).

(7) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021(e) of that Act (60 Stat. 1032; 22 U.S.C. 809(e)).

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 2 of the Act of May 15, 1952 (66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4).

[Sec. 170 as amended by sec. 1, Act of Aug. 7, 1956 (Public Law 1022, 84th Cong., 70 Stat. 1117); secs. 10, 11, and 12, Technical Amendments Act 1958 (72 Stat. 1609–10); sec. 7(a), Act of Sept. 14, 1960 (Public Law 86–779, 74 Stat. 1002); sec. 13(d), Rev. Act 1962 (76 Stat. 1043); sec. 2, Act of Oct. 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 209 and 231 (b), Rev. Act 1964 (78 Stat. 43, 100); sec. 1(b)(1), Act of Sept. 12, 1966 (Public Law 89–570, 80 Stat. 762); secs. 101(j)(2), 201(a)(1) and (2)(A), and 201(h), Tax Reform Act 1969 (83 Stat. 526, 549, 558, 565)]

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) *In general*—(1) *Allowance of deduction.* Any charitable contribution, as defined in section 170(c), actually paid during the taxable year is allowable as a deduction in computing taxable income, irrespective of the method of accounting employed or of the date on which the contribution is pledged. However, charitable contributions by corporations may under certain circumstances be deductible even though not paid during the taxable year, as provided in section 170(a)(2) and § 1.170A–11. The deduction is subject to the limitations of section 170(b) and § 1.170A–8 or § 1.170A–11. Subject to the provisions of section 170(d) and §§ 1.170A–10 and 1.170A–11, certain excess charitable contributions made by individuals and corporations shall be treated as paid in certain succeeding taxable years. For rules relating to the determination of, and the deduction for, amounts paid to maintain certain students as members of the taxpayer's household and treated under section 170(h) as paid for the use of an organization described in section 170(c)(2), (3), or (4), see § 1.170A–2. For the reduction of any charitable contributions for interest on certain indebtedness, see section 170(f)(5) and § 1.170A–3. For a special rule relating to the computation of the amount of the deduction with respect to a charitable contribution of certain ordinary income or capital gain property, see section 170(e) and § 1.170A–4. For rules for postponing the time for deduction of a charitable contribution of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A–5. For rules with respect to transfers in trust and of partial interests in property, see section 170(e), section 170(f)(2) and (3), §§ 1.170A–4, 1.170A–6, and 1.170A–7. For definition of the term "section 170(b)(1)(A) organization", see § 1.170A–9. For valuation of a remainder interest in real property, see section 170(f)(4) and the regulations thereunder. The deduction for charitable contributions is subject to verification by the district director.

(2) *Information required in support of deductions*—(i) *In general.* In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was

reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of § 1.170A–8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property", see paragraph (d)(3) of § 1.170A–8.

(ii) *Contribution by individual of property other than money.* If an individual taxpayer makes a charitable contribution of an item of property other than money and claims a deduction in excess of $200 in respect of his contribution of such item, he shall attach to his income tax return the following information with respect to such item:

(*a*) The name and address of the organization to which the contribution was made.

(*b*) The date of the actual contribution.

(*c*) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(*d*) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(*e*) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(*f*) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than 5 years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 5 years or more preceding the date on which the contribution was made.

(*g*) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(*h*) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which—

(*1*) Restricts temporarily or permanently the donee's right to dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone other than the donee organization or other than an organization participating with such organization in cooperative fund raising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(*3*) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(*i*) The total amount claimed as a deduction for the taxable year due to the contribution of the property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(iii) *Statement from donee organization.* Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property, other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market, which the donee deems to have a fair market value in excess of $200 at the time of receipt, such statement shall also indicate for each such item its location if it is retained by the organization, the amount received by the organization on any sale of the property and the date of sale or, in case of any other disposition of the property, the method of disposition. In the case of any contribution of tangible personal property, the statement shall indicate the use of the property by the organization and whether or not it is used for a purpose or function constituting the basis for the donee organization's exemption from income tax under section 501 or, in the case of a governmental unit, whether or not it is used for exclusively public purposes.

(b) *Time of making contribution.* Ordinarily, a contribution is made at the time delivery is effected. The unconditional delivery or mailing of a check which subsequently clears in due course will constitute an effective contribution on the date of delivery or mailing. If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee's agent, the gift is completed on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing. If the donor delivers the stock certificate to his bank or broker as the donor's agent, or to the issuing corporation or its agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation. For rules relating to the date of payment of a contribution consisting of a future interest in tangible personal property, see section 170(a)(3) and § 1.170A–5.

(c) *Value of a contribution in property.* (1) If a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution reduced as provided in section 170(e)(1) and paragraph (a) of § 1.170A–4.

(2) The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. If the contribution is made in property of a type which the taxpayer sells in the course of his business, the fair market value is the price which the taxpayer would have received if he had sold the contributed property in the usual market in which he customarily sells, at the time and place of the contribution and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom he customarily sells, but if he sells only at retail the usual market consists of his retail customers.

(3) If a donor makes a charitable contribution of property, such as stock in trade, at a time when he could not reasonably have been expected to realize its usual selling price, the value of the gift is not the usual selling price but is the amount for which the quantity of property contributed would have been sold by the donor at the time of the contribution.

(4) Any costs and expenses pertaining to the contributed property which were incurred in taxable years preceding the year of contribution and are properly reflected in the opening inventory for the year of contribution must be removed from inventory and are not a part of the cost of goods sold for purposes of determining gross income for the year of contribution. Any costs and expenses pertaining to the contributed property

which are incurred in the year of contribution and would, under the method of accounting used, be properly reflected in the cost of goods sold for such year are to be treated as part of the cost of goods sold for such year. If costs and expenses incurred in producing or acquiring the contributed property are, under the method of accounting used, properly deducted under section 162 or other section of the Code, such costs and expenses will be allowed as deductions for the taxable year in which they are paid or incurred, whether or not such year is the year of the contribution. Any such costs and expenses which are treated as part of the cost of goods sold for the year of contribution, and any such costs and expenses which are properly deducted under section 162 or other section of the Code, are not to be treated under any section of the Code as resulting in any basis for the contributed property. Thus, for example, the contributed property has no basis for purposes of determining under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of gain which would have been recognized if such property had been sold by the donor at its fair market value at the time of its contribution. The amount of any charitable contribution for the taxable year is not to be reduced by the amount of any costs or expenses pertaining to the contributed property which was properly deducted under section 162 or other section of the Code for any taxable year preceding the year of the contribution. This subparagraph applies only to property which was held by the taxpayer for sale in the course of a trade or business. The application of this subparagraph may be illustrated by the following examples:

Example (1). In 1970, A, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. The closing inventory at the end of 1969 properly included $400 of costs attributable to the acquisition of such property, and in 1969 A properly deducted under section 162 $50 of administrative and other expenses attributable to such property. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution allowed for 1970 is $400 ($600 − [$600 − $400]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $400 which was included in opening inventory for that year.

Example (2). The facts are the same as in example (1) except that the contributed property was acquired in 1970 at a cost of $400. The $400 cost of the property is included in determining the cost of goods sold for 1970, and $50 is allowed as a deduction for that year under section 162. A is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of the charitable contribution is reduced to zero ($600 − [$600 − $0]).

Example (3). In 1970, B, an individual using the calendar year as the taxable year and the accrual method of accounting, contributed to a church property from inventory having a fair market value of $600. Under § 1.471–3(c), the closing inventory at the end of 1969 properly included $450 costs attributable to the production of such property, including $50 of administrative and other indirect expenses which, under his method of accounting, was properly added to inventory rather than deducted as a business expense. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution allowed for 1970 is $450 ($600 − [$600 − $450]). Pursuant to this subparagraph, the cost of goods sold to be used in determining gross income for 1970 may not include the $450 which was included in opening inventory for that year.

Example (4). The facts are the same as in example (3) except that the contributed property was produced in 1970 at a cost of $450, including $50 of administrative and other indirect expenses. The $450 cost of the property is included in determining the cost of goods sold for 1970. B is not allowed any deduction under section 170 for the contributed property, since under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4 the amount of the charitable contribution is reduced to zero ($600 − [$600 − $0]).

Example (5). In 1970, C, a farmer using the cash method of accounting and the calendar year as the taxable year, contributed to a church a quantity of grain which he had raised having a fair market value of $600. In 1969, C paid expenses of $450 in raising the property which he properly deducted for such year under section 162. Under section 170(e)(1)(A) and paragraph (a) of § 1.170A–4, the amount of the charitable contribution in 1970 is reduced to zero ($600 − [$600 − $0]). Accordingly, C is not allowed any deduction under section 170 for the contributed property.

Example (6). The facts are the same as in example (5) except that the $450 expenses incurred in raising the contributed property were paid in 1970. The result is the same as in example (5), except the amount of $450 is deductible under section 162 for 1970.

(5) Transfers of property to an organization described in section 170(c) which bear a direct relationship to the taxpayer's trade or business and which are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable deductions as trade or business expenses rather than as charitable contributions. See section 162 and the regulations thereunder.

(d) *Purchase of an annuity.* (1) In the case of an annuity or portion thereof purchased from an organization described in section 170(c), there shall be allowed as a deduction the excess of the amount paid over the value at the time of purchase of the annuity or portion purchased.

(2) The value of the annuity or portion is the value of the annuity determined in accordance with paragraph (e)(1)(iii)(b)(2) of § 1.101–2.

(3) For determining gain on any such transaction constituting a bargain sale, see section 1011(b) and § 1.1011–2.

(e) *Transfers subject to a condition or power.* If as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest in property passes to, or is vested in, charity on the date of the gift and the interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appears on the date of the gift to be so remote as to be negligible, the deduction is allowable. For example, A transfers land to a city government for as long as the land is used by the city for a public park. If on the date of the gift the city does plan to use the land for a park and the possibility that the city will not use the land for a public park is so remote as to be negligible, A is entitled to a deduction under section 170 for his charitable contribution.

(f) *Special rules applicable to certain contributions.* (1) See section 14 of the Wild and Scenic Rivers Act (Public Law 90–542, 82 Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a charitable contribution under section 170.

(2) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of joint resolution of December 24, 1969 (Public Law 91–160, 83 Stat. 443).

(3) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Public Law 91–609 (84 Stat. 1809).

(g) *Contributions of services.* No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase "while away from home" has the same meaning as that phrase is used for purposes of section 162 and the regulations thereunder.

(h) *Exceptions and other rules.* (1) The provisions of section 170 do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to section 642(c)(6) and § 1.642(c)–4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(2) No deduction shall be allowed under section 170 for a charitable contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4), subject to the conditions

specified in such sections and the regulations thereunder.

(3) For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950, as amended (50 U.S.C. 790).

(4) For denial of deductions for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(5) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) A substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c)(3) and the regulations thereunder.

(6) No deduction shall be allowed under section 170 for expenditures for lobbying purposes, the promotion or defeat of legislation, etc. See also the regulations under sections 162 and 4945.

(7) No deduction for charitable contributions is allowed in computing the taxable income of a common trust fund or of a partnership. See sections 584(d)(3) and 703(a)(2)(D). However, a partner's distributive share of charitable contributions actually paid by a partnership during its taxable year may be allowed as a deduction in the partner's separate return for his taxable year with or within which the taxable year of the partnership ends, to the extent that the aggregate of his share of the partnership contributions and his own contributions does not exceed the limitations in section 170(b).

(8) For charitable contributions paid by a citizen of the United States entitled to the benefits of section 931, see section 931(d) and the regulations thereunder.

(9) For charitable contributions paid by a nonresident alien individual or a foreign corporation, see § 1.170A–4(b)(5) and sections 873, 876, 877, and 882(c), and the regulations thereunder.

(10) For charitable contributions paid by a citizen of the United States or a domestic corporation entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), see section 931(d) and the regulations thereunder.

(11) For carryover of excess charitable contributions in certain corporate acquisitions, see section 381(c)(19) and the regulations thereunder.

(i) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–2 Amounts paid to maintain certain students as members of the taxpayer's household.

(a) *In general.* (1) The term "charitable contributions" includes amounts paid by the taxpayer during the taxable year to maintain certain students as members of his household which, under the provisions of section 170(h) and this section, are treated as amounts paid for the use of an organization described in section 170(c)(2), (3), or (4), and such amounts, to the extent they do not exceed the limitations under section 170(h)(2) and paragraph (b) of this section, are contributions deductible under section 170. In order for such amounts to be so treated, the student must be an individual who is neither a dependent (as defined in section 152) of the taxpayer nor related to the taxpayer in a manner described in any of the paragraphs (1) through (8) of section 152(a), and such individual must be a member of the taxpayer's household pursuant to a written agreement between the taxpayer and an organization described in section 170(c)(2), (3), or (4) to implement a program of the organization to provide educational opportunities for pupils or students placed in private homes by such organization. Furthermore, such amounts must be paid to maintain such individual during the period in the taxable year he is a member of the taxpayer's household and is a full-time pupil or student in the 12th or any lower grade at an educational institution, as defined in section 151(e)(4) and § 1.151–3, located in the United States. Amounts paid outside of such period, but within the taxable year, for expenses necessary for the maintenance of the student during the period will qualify for the charitable contributions deduction if the other limitation requirements of the section are met.

(2) For purposes of subparagraph (1) of this paragraph, amounts treated as charitable contributions include only those amounts actually paid by the taxpayer during the taxable year which are directly attributable to the maintenance of the student while he is a member of the taxpayer's household and is attending an educational institution on a full-time basis. This would include amounts paid to insure the well-being of the individual and to carry out the purpose for which the individual was placed in the taxpayer's home. For example, a deduction under section 170 would be allowed for amounts paid for books, tuition, food, clothing, transportation, medical and dental care, and recreation for the individual. Amounts treated as charitable contributions under this section do not include amounts which the taxpayer would have expended had the student not been in the household. They would not include, for example, amounts paid in connection with the taxpayer's home for taxes, insurance, interest on a mortgage, repairs, etc. Moreover, such amounts do not include any depreciation sustained by the taxpayer in maintaining such student or students in his household, nor do they include the value of any services rendered on behalf of such student or students by the taxpayer or any member of the taxpayer's household.

(3) For purposes of section 170(h) and this section, an individual will be considered to be a full-time pupil or student at an educational institution only if he is enrolled for a course of study prescribed for a full-time student at such institution and is attending classes on a full-time basis. Nevertheless, such individual may be absent from school due to special circumstances and still be considered to be in full-time attendance. Periods during the regular school term when the school is closed for holidays, such as Christmas and Easter, and for periods between semesters are treated as periods during which the pupil or student is in full-time attendance at the school. Also, absences during the regular school term due to illness of such individual shall not prevent him from being considered as a full-time pupil or student. Similarly, absences from the taxpayer's household due to special circumstances will not disqualify the student as a member of the household. Summer vacations between regular school terms are not considered periods of school attendance.

(4) When claiming a deduction for amounts described in section 170(h) and this section, the taxpayer must submit with his return a copy of his agreement with the organization sponsoring the individual placed in the taxpayer's household, together with a summary of the various items for which amounts were paid to maintain such individual, and a statement as to the date the individual became a member of the household and the period of his full-time attendance at school and the name and location of such school. Substantiation of amounts claimed must be supported by adequate records of the amounts actually paid. Due to the nature of certain items, such as food, a record of amount spent for all members of the household, with an equal portion thereof allocated to each member, will be acceptable.

(b) *Limitations.* Section 170(h) and this section shall apply to amounts paid during the taxable year only to the extent that the amounts paid in maintaining each pupil or student do not exceed $50 multiplied by the number of full calendar months in the taxable year that the pupil or student is maintained in accordance with the provisions of this section. For purposes of such limitation if 15 or more days of a calendar month fall within the period to which the maintenance of such pupil or student relates, such month is considered as a full calendar month. To the extent that such amounts qualify as charitable contributions under section 170(c), the aggregate of such amounts plus other contributions made during the taxable year for the use of an organization described in section 170(c) is deductible under section 170 subject to the limitation provided in section 170(b)(1)(B) and paragraph (c) of § 1.170A–8.

(c) *Compensation or reimbursement.* Amounts paid during the taxable year

to maintain a pupil or student as a member of the taxpayer's household as provided in paragraph (a) of this section, shall not be taken into account under section 170(h) and this section, if the taxpayer receives any money or other property as compensation or reimbursement for any portion of such amounts. The taxpayer will not be denied the benefits of section 170(h) if he prepays an extraordinary or nonrecurring expense, such as a hospital bill or vacation trip, at the request of the individual's parents or the sponsoring organization and is reimbursed for such prepayment. The value of services performed by the pupil or student in attending to ordinary chores of the household will generally not be considered to constitute compensation or reimbursement. However, if the pupil or student is taken into the taxpayer's household to replace a former employee of the taxpayer or gratuitously to perform substantial services for the taxpayer, the facts and circumstances may warrant a conclusion that the taxpayer received reimbursement for maintaining the pupil or student.

(d) *No other amount allowed as deduction.* Except to the extent that amounts described in section 170(h) and this section are treated as charitable contributions under section 170(c) and, therefore, deductible under section 170(a), no deduction is allowed for any amount paid to maintain an individual, as a member of the taxpayer's household, in accordance with the provisions of section 170(h) and this section.

(e) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). The X organization is an organization described in section 170(c)(2) and is engaged in a program under which a number of European children are placed in the homes of U.S. residents in order to further the children's high school education. In accordance with paragraph (a) of this section, the taxpayer, A, who reports his income on the calendar year basis, agreed with X to take two of the children, and they were placed in the taxpayer's home on January 2, 1970, where they remained until January 21, 1971, during which time they were fully maintained by the taxpayer. The children enrolled at the local high school for the full course of study prescribed for 10th grade students and attended the school on a full-time basis for the spring semester starting January 18, 1970, and ending June 3, 1970, and for the fall semester starting September 1, 1970, and ending January 13, 1971. The total cost of food paid by A in 1970 for himself, his wife, and the two children amounted to $1,920, or $40 per month for each member of the household. Since the children were actually full-time students for only 8½ months during 1970, the amount paid for food for each child during that period amounted to $340. Other amounts amounts paid during the 8½-month period for each child for laundry, lights, water, recreation, and school supplies amounted to $160. Thus, the amounts treated under section 170(h) and this section as paid for the use of X would, with respect to each child, total $500 ($340+$160), or a total for both children of $1,000, subject to the limitations of paragraph (b) of this section. Since, for purposes of such limitations, the children were full-time students for only 8 full calendar months during 1970 (less than 15 days in January 1970), the taxpayer may treat only $800 as a charitable contribution made in 1970, that is, $50 multiplied by the 8 full calendar months, or $400 paid for the maintenance of each child. Neither the excess payments nor amounts paid to maintain the children during the period before school opened and for the period in summer between regular school terms is taken into account by reason of section 170(h). Also, because the children were full-time students for less than 15 days in January 1971 (although maintained in the taxpayer's household for 21 days), amounts paid to maintain the children during 1971 would not qualify as a charitable contribution.

Example (2). A religious organization described in section 170(c)(2) has a program for providing educational opportunities for children it places in private homes. In order to implement the program, the taxpayer, H, who resides with his wife, son, and daughter of high school age in a town in the United States, signs an agreement with the organization to maintain a girl sponsored by the organization as a member of his household while the child attends the local high school for the regular 1970–71 school year. The child is a full-time student at the school during the school year starting September 6, 1970, and ending June 6, 1971, and is a member of the taxpayer's household during that period. Although the taxpayer pays $200 during the school period falling in 1970, and $240 during the school period falling in 1971, to maintain the child, he cannot claim either amount as a charitable contribution because the child's parents, from time to time during the school year, send butter, eggs, meat, and vegetables to H to help defray the expenses of maintaining the child. This is considered property received as reimbursement under paragraph (c) of this section. Had her parents not contributed the food, the fact that the child, in addition to the normal chores she shared with the taxpayer's daughter, such as cleaning their own rooms and helping with the shopping and cooking, was responsible for the family laundry and for the heavy cleaning of the entire house while the taxpayer's daughter had no comparable responsibilities would also preclude a claim for a charitable contributions deduction. These substantial gratuitous services are considered property received as reimbursement under paragraph (c) of this section.

Example (3). A taxpayer resides with his wife in a city in the eastern United States. He agrees, in writing, with a fraternal society described in section 170(c)(4) to accept a child selected by the society for maintenance by him as a member of his household during 1971 in order that the child may attend the local grammar school as a part of the society's program to provide elementary education for certain children selected by it. The taxpayer maintains the child, who has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, during the entire year 1971. The child is a full-time student at the local grammar school for 9 full calendar months during the year. Under the agreement, the society pays the taxpayer $30 per month to help maintain the child. Since the $30 per month is considered as compensation or reimbursement to the taxpayer for some portion of the maintenance paid on behalf of the child, no amounts paid with respect to such maintenance can be treated as amounts paid in accordance with section 170(h). In the absence of the $30 per month payments, if the child qualifies as a dependent of the taxpayer under section 152(a)(9), that fact would also prevent the maintenance payments from being treated as charitable contributions paid for the use of the fraternal society.

(f) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–3 Reduction of charitable contribution for interest on certain indebtedness.

(a) *In general.* Section 170(f)(5) requires that the amount of a charitable contribution be reduced for certain interest to the extent necessary to avoid the deduction of the same amount both as an interest deduction under section 163 and as a deduction for charitable contributions under section 170. The reduction is to be determined in accordance with paragraphs (b) and (c) of this section.

(b) *Interest attributable to postcontribution period.* In determining the amount to be taken into account as a charitable contribution for purposes of section 170, the amount determined without regard to section 170(f)(5) or this section shall be reduced by the amount of interest which has been paid, or is to be paid, by the taxpayer, which is attributable to any liability connected with the contribution, and which is attributable to any period of time after the making of the contribution. The deduction otherwise allowable for charitable contributions under section 170 is required to be reduced pursuant to section 170(f)(5) and this section only if, in connection with a charitable contribution, a liability is assumed by the recipient of the contribution or by any other person or if the charitable contribution is of property which is subject to a liability. Thus, if a charitable contribution is made in property and the transfer is conditioned upon the assumption of a liability by the donee or by some other person, the contribution must be reduced by the amount of any interest which has been paid, or will be paid, by the taxpayer, which is attributable to the liability, and which is attributable to any period after the making of the contribution. The adjustment referred to in this paragraph must also be made where the contributed property is subject to a liability and the value of the property reflects the payment by the donor of interest with respect to a period of time after the making of the contribution.

(c) *Interest attributable to precontribution period.* If, in connection with the charitable contribution of a bond, a liability is assumed by the recipient or by any other person, or if the bond is subject to a liability, then, in determining the amount to be taken into account as a charitable contribution under section 170, the amount determined without regard to section 170(f)(5) and this section shall, without regard to whether any reduction may be required by paragraph (b) of this section, also be reduced for interest which has been paid, or is to be paid, by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and which is attributable to any period before

the making of the contribution. However, the reduction referred to in this paragraph shall be made only to the extent that such reduction does not exceed the interest (including bond discount and other interest equivalent) receivable on the bond, and attributable to any period before the making of the contribution which is not, by reason of the taxpayer's method of accounting, includible in the taxpayer's gross income for any taxable year. For purposes of section 170(f)(5) and this section the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). On January 1, 1970, A, a cash basis taxpayer using the calendar year as the taxable year, contributed to a charitable organization real estate having a fair market value and adjusted basis of $10,000. In connection with the contribution the charitable organization assumed an indebtedness of $8,000 which A had incurred. On December 31, 1969, A prepaid one year's interest on that indebtedness for 1970, amounting to $960, and took an interest deduction of $960 for such amount. The amount of the gift, determined without regard to this section, is $2,960 ($10,000 less $8,000, the outstanding indebtedness, plus $960, the amount of prepaid interest). In determining the amount of the deduction for the charitable contribution, the value of the gift ($2,960) must be reduced by $960 to eliminate from the computation of such deduction that portion thereof for which A has been allowed an interest deduction.

Example (2). (a) On January 1, 1970, B, an individual using the cash receipts and disbursements method of accounting, purchased for $9,950 a 5½ percent $10,000, 20-year M Corporation bond, the interest on which was payable semiannually on June 30 and December 31. The M Corporation had issued the bond on January 1, 1960, at a discount of $720 from the principal amount. On December 1, 1970, B donated the bond to a charitable organization, and, in connection with the contribution, the charitable organization assumed an indebtedness of $7,000 which B had incurred to purchase and carry the bond.

(b) During the calendar year 1970 B paid accrued interest of $330 on the indebtedness for the period from January 1, 1970, to December 1, 1970, and has taken an interest deduction of $330 for such amount. No portion of the bond discount of $36 a year ($720 divided by 20 years) has been included in B's income, and of the $550 of annual interest receivable on the bond, he included in income only the June 30, 1970, payment of $275.

(c) The market value of the bond on December 1, 1970, was $9,902. Such value includes $229 of interest receivable which had accrued from July 1 to December 1, 1970.

(d) The amount of the charitable contribution determined without regard to this section is $2,902 ($9,902, the value of the property on the date of gift, less $7,000, the amount of the liability assumed by the charitable organization). In determining the amount of the allowable deduction for charitable contributions, the value of the gift ($2,902) must be reduced to eliminate from the deduction that portion thereof for which B has been allowed an interest deduction. Although the amount of such interest deduction was $330, the reduction required by this section is limited to $262, since the reduction is not in excess of the amount of interest income on the bond ($229 of accrued interest plus $33, the amount of bond discount attributable to the 11-month period B held the bond).

(e) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–4 Reduction in amount of charitable contributions of certain appreciated property

(a) *Amount of reduction.* Section 170(e)(1) requires that the amount of the charitable contribution which would be taken into account under section 170(a) without regard to section 170(e) shall be reduced before applying the percentage limitations under section 170(b)—

(1) In the case of a contribution by an individual or by a corporation of ordinary income property, as defined in paragraph (b)(1) of this section, by the amount of gain (hereinafter in this section referred to as ordinary income) which would have been recognized as gain which is not long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization,

(2) In the case of a contribution by an individual of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section, by 50 percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization, and

(3) In the case of a contribution by a corporation of section 170(e) capital gain property, as defined in paragraph (b)(2) of this section, by 62½ percent of the amount of gain (hereinafter in this section referred to as long-term capital gain) which would have been recognized as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

Section 170(e)(1) and this paragraph do not apply to reduce the amount of the charitable contribution where, by reason of the transfer of the contributed property, ordinary income or capital gain is recognized by the donor in the same taxable year in which the contribution is made. Thus, where income or gain is recognized under section 453(d) upon the transfer of an installment obligation to a charitable organization, or under section 454(b) upon the transfer of an obligation issued at a discount to such an organization, or upon the assignment of income to such an organization, section 170(e)(1) and this paragraph do not apply if recognition of the income or gain occurs in the same taxable year in which the contribution is made. Section 170(e)(1) and this paragraph apply to a charitable contribution of an interest in ordinary income property or section 170(e) capital gain property which is described in paragraph (b) of § 1.170A–6, or paragraph (b) of § 1.170A–7. For purposes of applying section 170(e)(1) and this paragraph it is immaterial whether the charitable contribution is made "to" the charitable organization or whether it is made "for the use of" the charitable organization. See § 1.170A–8(a)(2).

(b) *Definitions and other rules.* For purposes of this section—

(1) *Ordinary income property.* The term "ordinary income property" means property any portion of the gain on which would not have been long term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization. Such term includes, for example, property held by the donor primarily for sale to customers in the ordinary course of his trade or business, a work of art created by the donor, a manuscript prepared by the donor, letters and memorandums prepared by or for the donor, a capital asset held by the donor for not more than 6 months, and stock described in section 306(a), 341(a), or 1248(a) to the extent that, after applying such section, gain on its disposition would not have been long term capital gain. The term does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and paragraph (c) of § 1.170A–6.

(2) *Section 170(e) capital gain property.* The term "section 170(e) capital gain property" means property any portion of the gain on which would have been treated as long-term capital gain if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization and which—

(i) Is contributed to or for the use of a private foundation, as defined in section 509(a) and the regulations thereunder, other than a private foundation described in section 170(b)(1)(E),

(ii) Constitutes tangible personal property contributed to or for the use of a charitable organization, other than a private foundation to which subdivision (i) of this subparagraph applies, which is put to an unrelated use by the charitable organization within the meaning of subparagraph (3) of this paragraph, or

(iii) Constitutes property not described in subdivision (i) or (ii) of this subparagraph which is 30-percent capital gain property to which an election under paragraph (d)(2) of § 1.170A–8 applies.

For purposes of this subparagraph a fixture which is intended to be severed from real property shall be treated as tangible personal property.

(3) *Unrelated use*—(i) *In general.* The term "unrelated use" means a use which is unrelated to the purpose or function constituting the basis of the charitable organization's exemption under section 501 or, in the case of a contribution of property to a governmental unit, the use of such property by such unit for other than exclusively public purposes. For example, if a painting contributed to an educational institution is used by that organization for educational purposes by being placed in its library for display

and study by art students, the use is not an unrelated use; but if the painting is sold and the proceeds used by the organization for educational purposes, the use of the property is an unrelated use. If furnishings contributed to a charitable organization are used by it in its offices and buildings in the course of carrying out its functions, the use of the property is not an unrelated use. If a set or collection of items of tangible personal property is contributed to a charitable organization or governmental unit, the use of the set or collection is not an unrelated use if the donee sells or otherwise disposes of only an insubstantial portion of the set or collection. The use by a trust of tangible personal property contributed to it for the benefit of a charitable organization is an unrelated use if the use by the trust is one which would have been unrelated if made by the charitable organization.

(ii) *Proof of use.* For purposes of applying subparagraph (2)(ii) of this paragraph, a taxpayer who makes a charitable contribution of tangible personal property to or for the use of a charitable organization or governmental unit may treat such property as not being put to an unrelated use by the donee if—

(*a*) He establishes that the property is not in fact put to an unrelated use by the donee, or

(*b*) At the time of the contribution or at the time the contribution is treated as made, it is reasonable to anticipate that the property will not be put to an unrelated use by the donee. In the case of a contribution of tangible personal property to or for the use of a museum, if the object donated is of a general type normally retained by such museum or other museums for museum purposes, it will be reasonable for the donor to anticipate, unless he has actual knowledge to the contrary, that the object will not be put to an unrelated use by the donee, whether or not the object is later sold or exchanged by the donee.

(4) *Property used in trade or business.* For purposes of applying subparagraphs (1) and (2) of this paragraph, property which is used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset, except that any gain in respect of such property which would have been recognized if the property had been sold by the donor at its fair market value at the time of its contribution to the charitable organization shall be treated as ordinary income to the extent that such gain would have constituted ordinary income by reason of the application of section 617(d)(1), 1245(a), 1250(a), 1251(c), or 1252(a).

(5) *Nonresident alien individuals and foreign corporations.* The reduction in the case of a nonresident alien individual or a foreign corporation shall be determined by taking into account the gain which would have been recognized and subject to tax under chapter 1 of the Code if the property had been sold or disposed of within the United States by the donor at its fair market value at the time of its contribution to the charitable organization. However, the amount of such gain which would have been subject to tax under section 871(a) or 881 (relating to gain not effectively connected with the conduct of a trade or business within the United States) if there had been a sale or other disposition within the United States shall be treated as long-term capital gain. Thus, a charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will be reduced only as provided in section 170(e)(1)(B) and paragraph (a)(2) or (3) of this section, but only if the property contributed is described in subdivision (i), (ii), or (iii) of subparagraph (2) of this paragraph. A charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will in no case be reduced under section 170(e)(1)(A) and paragraph (a)(1) of this section.

(c) *Allocation of basis and gain*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph—

(i) If a taxpayer makes a charitable contribution of less than his entire interest in appreciated property, whether or not the transfer is made in trust, as, for example, in the case of a transfer of appreciated property to a pooled income fund described in section 642(c)(5) and § 1.642(c)–5, and is allowed a deduction under section 170 for a portion of the fair market value of such property, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property the taxpayer's adjusted basis in such property at the time of the contribution shall be allocated under section 170(e)(2) between the contributed portion of the property and the noncontributed portion.

(ii) The adjusted basis of the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property.

(iii) The ordinary income and the long-term capital gain which shall be taken into account in applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property shall be the amount of gain which would have been recognized as ordinary income and long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(2) *Bargain sale.* (i) If there is a bargain sale of property to the charitable organization and if section 1011(b) and § 1.1011–2 apply, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property there shall be allocated under section 1011(b) to the contributed portion of the property the portion of the adjusted basis which is not allocated under section 1011(b) to the noncontributed portion of the property for purposes of determining gain from the bargain sale. The portion of the adjusted basis which is so allocated to the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property. For purposes of applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property in such a case, there shall be allocated to the contributed portion the amount of gain which is not recognized on the bargain sale but which would have been recognized as ordinary income or long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) If there is a bargain sale of property to the charitable organization and if section 1011(b) and § 1.1011–2 do not apply, the taxpayer's adjusted basis of the entire property shall be allocated to the noncontributed portion of the property in accordance with paragraph (e) of § 1.1001–1 for purposes of determining gain from the sale. In such case, no portion of the adjusted basis shall be allocated to the contributed portion of the property.

(iii) The term "bargain sale", as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

(3) *Ratio of ordinary income and capital gain.* For purposes of applying subparagraphs (1)(iii) and (2)(i) of this paragraph, the amount of ordinary income (or long-term capital gain) which would have been recognized if the contributed portion of the property had been sold by the donor at its fair market value at the time of its contribution shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of its contribution as (i) the fair market value of the contributed portion at such time bears to (ii) the fair market value of the entire property at such time. In the case of a bargain sale, the fair market value of the contributed portion for purposes of subdivision (i) is the amount determined by subtracting from the fair market value of the entire property the amount realized on the sale.

(4) *Donee's basis of property acquired.* The adjusted basis of the contributed portion of the property, as determined under subparagraph (1) or (2) of this paragraph, shall be used by the donee in applying to the contributed portion such

provisions as section 514(a)(1), relating to adjusted basis of debt-financed property; section 1015(a), relating to basis of property acquired by gift; section 4940(c)(4), relating to capital gains and losses in determination of net investment income; and section 4942(f)(2)(B), relating to net short-term capital gain in determination of tax on failure to distribute income. The fair market value of the contributed portion of the property at the time of the contribution shall not be used by the donee as the basis of such contributed portion.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). (a) On July 1, 1970, C, an individual, makes the following charitable contributions, all of which are made to a church except in the case of the stock (as indicated):

Property	Fair market value	Adjusted basis	Recognized gain if sold
Ordinary income property	$50,000	$35,000	$15,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock held more than 6 months contributed to—			
(i) A church	25,000	21,000	4,000
(ii) A private foundation not described in section 170(b)(1)(E)	15,000	10,000	5,000
(2) Tangible personal property held more than 6 months (put to unrelated use by church)	12,000	6,000	6,000
Total	102,000	72,0000	30,000

(b) After making the reductions required by paragraph (a) of this section, the amount of charitable contributions allowed (before application of section 170(b) limitations) is as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to—			
(i) The church	25,000	----------	25,000
(ii) The private foundation	15,000	2,500	12,500
(2) Tangible personal property	12,000	3,000	9,000
Total	102,000	20,500	81,500

(c) If C were a corporation, rather than an individual, the amount of charitable contributions allowed (before application of section 170(b) limitation) would be as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	$50,000	$15,000	$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to—			
(i) The church	25,000	----------	25,000
(ii) The private foundation	15,000	3,125	11,875
(2) Tangible personal property	12,000	3,750	8,250
Total	102,000	21,875	80,125

Example (2). On March 1, 1970, D, an individual, contributes to a church intangible property to which section 1245 applies which has a fair market value of $60,000 and an adjusted basis of $10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 $20,000 of the gain of $50,000 would have been treated as ordinary income and $30,000 would have been long-term capital gain. Under paragraph (a)(1) of this section, D's contribution of $60,000 is reduced by $20,000.

Example (3). The facts are the same as in example (2) except that the property is contributed to a private foundation not described in section 170(b)(1)(E). Under paragraph (a)(1) and (2) of this section, D's contribution is reduced by $35,000 (100 percent of the ordinary income of $20,000 and 50 percent of the long-term capital gain of $30,000).

Example (4). (a) In 1971, E, an individual calendar-year taxpayer, contributes to a church stock held for more than 6 months which has a fair market value of $90,000 and an adjusted basis of $10,000. In 1972, E also contributes to a church stock held for more than 6 months which has a fair market value of $20,000 and an adjusted basis of $10,000. E's contribution base for 1971 is $200,000; and for 1972, is $150,000. E makes no other charitable contributions for these 2 taxable years.

(b) For 1971 the amount of the contribution which may be taken into account under section 170(a) is limited by section 170(b)(1)(D)(i) to $60,000 ($200,000×30%), and A is allowed a deduction for $60,000. Under section 170(b)(1)(D)(ii), E has a $30,000 carryover to 1972 of 30-percent capital gain property, as defined in paragraph (d)(3) of § 1.170A-8. For 1972 the amount of the charitable contributions deduction is $45,000 (total contributions of $50,000 [$30,000+$20,000] but not to exceed 30% of $150,000).

(c) Assuming, however, that in 1972 E elects under section 170(b)(1)(D)(iii) and paragraph (d)(2) of § 1.170A-8 to have section 170(e)(1)(B) apply to his contributions and carryovers of 30-percent capital gain property, he must apply section 170(d)(1) as if section 170(e)(1)(B) had applied to the contribution for 1971. If section 170(e)(1)(B) had applied in 1971 to his contributions of 30-percent capital gain property, E's contribution would have been reduced from $90,000 to $50,000, the reduction of $40,000 being 50 percent of the gain of $80,000 ($90,000−$1,000) which would have been recognized as long-term capital gain if the property had been sold by E at its fair market value at the time of its contribution to the church. Accordingly, by taking the election into account, E has no carryover of 30-percent capital gain property to 1972 since the charitable contributions deduction of $60,000 allowed for 1971 in respect of that property exceeds the reduced contribution of $50,000 for 1971 which may be taken into account by reason of the election. The charitable contributions deduction of $60,000 allowed for 1971 is not reduced by reason of the election.

(d) Since by reason of the election E is allowed under paragraph (a)(2) of this section a charitable contributions deduction for 1972 of $15,000 ($20,000−[($20,000−$10,000)×50%]) and since the $30,000 carryover from 1971 is eliminated, it would not be to E's advantage to make the election under section 170(b)(1)(D)(iii) in 1972.

Example (5). In 1970, F, an individual calendar-year taxpayer, sells to a church for $4,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of $6,000 ($10,000−$4,000 amount realized), which under paragraph (a)(1) of this section is reduced to zero ($6,000 [$10,000−$4,000 adjusted basis]). Since without regard to section 1011(b) no deduction is allowable under section 170 by reason of the bargain sale, section 1011(b) does not apply for purposes of allocating a portion of the adjusted basis to the noncontributed portion of the property and paragraph (c)(2)(i) of this section does not apply for purposes of allocating a portion of the adjusted basis to the contributed portion of the property. Accordingly, under paragraph (c)(2)(ii) of this section no gain is recognized to F on the bargain sale, and under section 1012 the basis of the property to the church is $4,000.

Example (6). In 1970, G, an individual calendar-year taxpayer, sells to a church for $6,000 ordinary income property with a fair market value of $10,000 and an adjusted basis of $4,000. G's contribution base for 1970 is $20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of $4,000 ($10,000−$6,000 amount realized), which under paragraph (a)(1) of this section is reduced to zero ($4,000 [$10,000−$4,000 adjusted basis]). Since without regard to section 1011(b) no deduction is allowable under section 170 by reason of the bargain sale, section 1011(b) does not apply for purposes of allocating a portion of the basis to the noncontributed portion of the property and paragraph (c)(2)(i) of this section does not apply for purposes of allocating a portion of the adjusted basis to the contributed portion of the property. Accordingly, under paragraph (c)(2)(ii) of this section F recognizes on the bargain sale a gain of $2,000 ($6,000−$4,000 adjusted basis), and under section 1012 the basis of the property to the church is $6,000.

Example (7). In 1970, H, an individual calendar-year taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. H's contribution base for 1970 is $20,000, and H makes no other charitable contributions in 1970. Thus, H

makes a charitable contribution to the church of $8,000 ($10,000—$2,000 amount realized). Without regard to section 1011(b), H is allowed a deduction under section 170 of $2,000 ($8,000 [$10,000—$4,000 adjusted basis]), and, as a consequence, section 1011 (b) must be applied to the bargain sale. Under paragraphs (a)(1) and (c)(2)(i) of this section, H's contribution of $8,000 is reduced by the amount of $4,800 of ordinary income ($8,000 [$4,000 adjusted basis×$8,000 value of gift/$10,000 value of entire property]). The reduced contribution of $3,200 consists of the portion ($4,000×$8,000/$10,000) of the adjusted basis not allocated to the noncontributed portion of the property. Under sections 1012 and 1015(a) the basis of the property to the church is $5,200 ($2,000+$3,200).

Example (8). In 1970, F, an individual calendar-year taxpayer, sells for $4,000 to a private foundation not described in section 170(b)(1)(E) property to which section 1245 applies which has a fair market value of $10,000 and an adjusted basis of $4,000. F's contribution base for 1970 is $20,000, and F makes no other charitable contributions in 1970. At the time of the bargin sale, F has used the property in his business for more than 6 months. Thus, F makes a charitable contribution of $6,000 ($10,000—$4,000 amount realized), which is 60 percent of the value of the property. The amount realized on the bargain sale is 40 percent ($4,000/$10,000) of the value of the property. If the property had been sold by F at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000—$4,000 adjusted basis) would have been treated as ordinary income and $2,000 would have been long term capital gain. Without regard to section 1011(b), F is allowed a deduction under section 170 of $1,000 ($6,000 [$4,000 ordinary income+50 percent of $2,000 long term capital gain]), and, as a consequence, section 1011(b) must be applied to the bargain sale. Accordingly, in applying section 1011(b) to the bargain sale, adjusted basis in the amount of $1,600 ($4,000 adjusted basis×40 percent) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and F's recognized gain of $2,400 ($4,000 amount realized less $1,600 adjusted basis) consists of $1,600 ($4,000×40 percent) of ordinary income and $800 ($2,000×40 percent) of long term capital gain. Under paragraphs (a) and (c)(2)(i) of this section, F's contribution of $6,000 is reduced by the sum of $2,400 ($4,000×60 percent) of ordinary income and $600 ([$2,000×60 percent]×50 percent) of long term capital gain. The reduced contribution of $3,000 consists of $2,400 ($4,000×60 percent) of adjusted basis and $600 ([$2,000×60 percent]×50 percent) of long term capital gain not used as a reduction under paragraph (a)(2) of this section. Under sections 1012 and 1015(a) the basis of the property to the private foundation is $6,400 ($4,000+$2,400).

Example (9). On January 1, 1970, A, an individual, transfers to a charitable remainder annuity trust described in section 664(d)(1) stock which he has held for more than 6 months and which has a fair market value of $250,000 and an adjusted basis of $50,000, an irrevocable remainder interest in the property being contributed to a private foundation not described in section 170(b)(1)(E). The trusts provides that an annuity of $12,500 a year is payable to A at the end of each year for 20 years. By reference to Table B of § 20.2031–10(f) of this chapter (Estate Tax Regulations) the figure in column (2) opposite 20 years is 11.4699. Therefore, under § 1.664–2 the fair market value of the gift of the remainder interest to charity is $106,626.25 ($250,000 [$12,500×11.4699]). Under paragraph (c)(1)(ii) of this section, the adjusted basis allocated to the contributed portion of the property is $21,325.25 ($50,000×$106,626.25/$250,000). Under paragraphs (a)(2) and (c)(1) of this section, A's contribution is reduced by $42,650.50 (50 percent×[$106,626.25—$21,325.25]) to $63,975.75 ($106,626.25—$42,650.50). If, however, the irrevocable remainder interest in the property had been contributed to a section 170(b)(1)(A) organization, A's contribution of $106,626.25 would not be reduced under paragraph (a) of this section.

Example (10). (a) On July 1, 1970, B, a calendar-year individual taxpayer, sells to a church for $75,000 intangible property to which section 1245 applies which has a fair market value of $250,000 and an adjusted basis of $75,000. Thus, B makes a charitable contribution to the church of $175,000 ($250,000—$75,000 amount realized), which is 70 percent ($175,000/$250,000) of the value of the property. The amount realized on the bargain sale is 30 percent ($75,000/$250,000) of the value of the property. At the time of the bargain sale, B has used the property in his business for more than 6 months. B's contribution base for 1970 is $500,000, and B makes no other charitable contributions in 1970. If the property had been sold by B at its fair market value at the time of its contribution, it is assumed that under section 1245 $105,000 of the gain of $175,000 ($250,000—$75,000 adjusted basis) would have been treated as ordinary income and $70,000 would have been long term capital gain. Without regard to section 1011(b), B is allowed a deduction under section 170 of $70,000 ($175,000—$105,000 ordinary income), and, as a consequence, section 1011(b) must be applied to the bargain sale. Accordingly, in applying section 1011(b) to the bargain sale, adjusted basis in th eamount of $22,500 ($75,000 adjusted basis × 30 percent) is allocated under § 1.1011–2(b) to the noncontributed portion of the property, and B's recognized gain of $52,500 ($75,000 amount realized less $22,500 adjusted basis) consists of $31,500 ($105,000×30 percent) of ordinary income and $21,000 ($70,000×30 percent) of long term capital gain.

(b) Under paragraphs (a)(1) and (c)(2)(i) of this section B's contribution of $175,000 is reduced by $73,500 ($105,000×70 percent) of ordinary income. The reduced contribution of $101,500 consists of $52,500 [$75,000×70 percent] of adjusted basis allocated to the contributed portion of the property and $49,000 [$70,000×70 percent] of long term capital gain allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is $127,500 ($75,000+$52,500).

(e) *Effective date.* This section applies only to contributions paid after December 31, 1969, except that, in the case of a charitable contribution of a letter, memorandum, or property similar to a letter or memorandum, it applies to contributions paid after July 25, 1969.

§ 1.170A–5 Future interests in tangible personal property.

(a) *In general.* (1) A contribution consisting of a transfer of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of the property—

(i) Have expired, or

(ii) Are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) and the regulations thereunder, relating to losses, expenses, and interest with respect to transactions between related taxpayers.

(2) Section 170(a)(3) and this section have no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during 3 months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than 1 year.

(3) Section 170(a)(3) and this section have no application in respect of a transfer of a future interest in intangible personal property or in real property. However, a fixture which is intended to be severed from real property shall be treated as tangible personal property. For example, a contribution of a future interest in a chandelier which is attached to a building is considered a contribution which consists of a future interest in tangible personal property if the transferor intends that it be detached from the building at or prior to the time when the chartiable organization's right to possession or enjoyment of the chandelier is to commence.

(4) For purposes of section 170(a)(3) and this section, the term "future interest" has generally the same meaning as it has when used in section 2503 and § 25.2503–3 of this chapter (Gift Tax Regulations); it includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term "future interest" includes situations in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property.

(5) In the case of a charitable contribution of a future interest to which section 170(a)(3) and this section apply, the other provisions of section 170 and the regulations thereunder are inapplicable to the contribution until such time as the contribution is treated as made under section 170(a)(3).

(b) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). On December 31, 1970, A, an individual who reports his income on the calendar year basis, conveys by deed of gift to a museum title to a painting, but reserves to himself the right to the use, possession, and enjoyment of the painting during his lifetime. It is assumed that there was no intention to avoid the application of section 170(f)(3)(A) by the conveyance. At the time of the gift the value of the painting is $90,000. Since the contribution consists of

a future interest in tangible personal property in which the donor has retained an intervening interest, no contribution is considered to have been made in 1970.

Example (2). Assume the same facts as in example (1) except that on December 31, 1971, A relinquishes all of his right to the use, possession, and enjoyment of the painting and delivers the painting to the museum. Assuming that the value of the painting has increased to $95,000, A is treated as having made a charitable contribution of $95,000 in 1971 for which a deduction is allowable without regard to section 170(f)(3)(A).

Example (3). Assume the same facts as in example (1) except A dies without relinquishing his right to the use, possession, and enjoyment of the painting. Since A did not relinquish his right to the use, possession, and enjoyment of the property during his life, A is treated as not having made a charitable contribution of the painting for income tax purposes.

Example (4). Assume the same facts as in example (1) except A, on December 31, 1971, transfers his interest in the painting to his son, B, who reports his income on the calendar year basis. Since the relationship between A and B is one described in section 267(b), no contribution of the remainder interest in the painting is considered to have been made in 1971.

Example (5). Assume the same facts as in example (4). Also assume that on December 31, 1972, B conveys to the museum the interest measured by A's life. B has made a charitable contribution of the present interest in the painting conveyed to the museum. In addition, since all intervening interests in, and rights to the actual possession or enjoyment of the property, have expired, a charitable contribution of the remainder interest is treated as having been made by A in 1972 for which a deduction is allowable without regard to section 170(f)(3)(A). Such remainder interest is valued according to Table A(1) in § 20.2031–10(f) of this chapter (estate tax regulations), determined by subtracting the value of B's interest measured by A's life expectancy in 1972, and B receives a deduction in 1972 for the life interest measured by A's life expectancy and valued according to Table A(1) in such section.

Example (6). On December 31, 1970, C, an individual who reports his income on the calendar year basis, transfers a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university. C retains for himself for life an income interest in the painting, the remainder interest in the painting being contributed to the university. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no charitable contribution is considered to have been made in 1970.

Example (7). On January 15, 1972, D, an individual who reports his income on the calendar year basis, transfers a capital asset held for more than 6 months consisting of a valuable painting to a pooled income fund described in section 642(c)(5), which is maintained by a university, and creates an income interest in such painting for E for life. E is an individual not standing in a relationship to D described in section 267(b). The remainder interest in the property is contributed by D to the university. The trustee of the pooled income fund puts the painting to an unrelated use within the meaning of paragraph (b)(3) of § 1.170A–4. Accordingly, D is allowed a deduction under section 170 in 1972 for the present value of the remainder interest in the painting, after reducing such amount under section 170(e)(1)(B)(i) and paragraph (a)(2) of § 1.170A–4. This reduction in the amount of the contribution is required since under paragraph (b)(3) of that section the use by the pooled income fund of the painting is a use which would have been an unrelated use if it had been made by the university.

(c) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A–6 Charitable contributions in trust.

(a) *In general.* (1) No deduction is allowed under section 170 for the fair market value of a charitable contribution of any interest in property which is less than the donor's entire interest in the property and which is transferred in trust unless the transfer meets the requirements of paragraph (b) or (c) of this section. If the donor's entire interest in the property is transferred in trust and is contributed to a charitable organization described in section 170(c), a deduction is allowed under section 170. Thus, if on July 1, 1972, property is transferred in trust with the requirement that the income of the trust be paid for a term of 20 years to a church and thereafter the remainder be paid to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property. See section 170(f)(2) and (3)(B), and paragraph (b)(1) of § 1.170A–7.

(2) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(2), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds which he owns. If the taxpayer transfers such property in trust with the requirement that the income of the trust be paid to his son for life and that the reversionary interest be paid to himself and immediately after creating the trust contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest in the trust.

(b) *Charitable contribution of a remainder interest in trust*—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the trust is—

(i) A pooled income fund described in section 642(c)(5) and § 1.642(c)–5,

(ii) A charitable remainder annuity trust described in section 664(d)(1) and § 1.664–2, or

(iii) A charitable remainder unitrust described in section 664(d)(2) and § 1.664–3.

(2) *Value of a remainder interest.* The fair market value of a remainder interest in a pooled income fund shall be computed under § 1.642(c)–6. The fair market value of a remainder interest in a charitable remainder annuity trust shall be computed under § 1.664–2. The fair market value of a remainder interest in a charitable remainder unitrust shall be computed under § 1.664–4. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and § 1.170A–4.

(c) *Charitable contribution of an income interest in trust*—(1) *In general.* No deduction is allowed under section 170 for the fair market value of a charitable contribution of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust unless the income interest is either an annuity trust interest or a unitrust interest, as defined in subparagraph (2) of this paragraph, and the grantor is treated as the owner of such interest for purposes of applying section 671, relating to grantors and others treated as substantial owners. See section 4947(a)(2) for the application to such income interests in trust of the provisions relating to private foundations and section 508(e) for rules relating to provisions required in the governing instruments.

(2) [Reserved]

(3) *Valuation of income interest.* (i) The deduction allowed by section 170(f)(2)(B) for a charitable contribution of an annuity trust interest is limited to the fair market value of such interest on the date of contribution, as computed under § 20.2031–10 of this chapter (estate tax regulations).

(ii) The deduction allowed under section 170(f)(2)(B) for a charitable contribution of a unitrust interest is limited to the fair market value of the unitrust interest on the date of contribution. The fair market value of the unitrust interest shall be determined by subtracting (*a*) the present value of all interests in the transferred property that follow the unitrust interest from (*b*) the fair market value of the transferred property. For such purposes the present value of all interests that follow the unitrust interest shall be determined under § 1.664–4 by treating such interests as a remainder interest in a charitable remainder unitrust.

(iii) If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under subparagraph (1) of this paragraph only for the minimum amount it is evident the charity will receive. For example, assume that the taxpayer contributes in trust to a church a 9-year irrevocable income interest in $20,000 cash, the residue to revert to himself. The trust instrument provides that the church is to be paid an annuity-trust interest (as defined in subparagraph (2)(i) of this paragraph) of $4,000, payable annually at the end of each year for 9

years. Since the fair market value of an annuity of $4,000 a year for a period of 9 years, as determined under subdivision (i) of this subparagraph and Table B in § 20.2031–10(f) of this chapter (Estate Tax Regulations), is $27,206.80 ($4,000 ×6.8017), it appears that the church will not receive the beneficial enjoyment of the income interest. Accordingly, even though the donor is treated as the owner of this trust under section 673, he is allowed a deduction under subparagraph (1) of this paragraph only for $20,000, which is the minimum amount it is evident the church will receive.

(iv) See paragraph (b)(1) of § 1.170A–4 for rule that the term "ordinary income property" for purposes of section 170(e) does not include an income interest in respect of which a deduction is allowed under section 170(f)(2)(B) and this paragraph.

(4) *Recapture upon termination of treatment as owner.* If for any reason the donor of an income interest in property ceases at any time before the termination of such interest to be treated as the owner of such interest for purposes of applying section 671, as for example, where he dies before the termination of such interest, he shall for purposes of this chapter be considered as having received, on the date he ceases to be so treated, an amount of income equal to (i) the amount of any deduction he was allowed under section 170 for the contribution of such interest reduced by (ii) the discounted value of all amounts which were required to be, and actually were, paid with respect to such interest under the terms of trust to the charitable organization before the time at which he ceases to be treated as the owner of the interest. The discounted value of the amounts described in subdivision (ii) of this subparagraph shall be computed by treating each such amount as a contribution of a remainder interest after a term of years and valuing such amount as of the date of contribution of the income interest by the donor, such value to be determined under § 20.2031–10 of this chapter consistently with the manner in which the fair market value of the income interest by the donor, such value to subparagraph (3)(i) of this paragraph. The application of this subparagraph will not be construed to disallow a deduction to the trust for amounts paid by the trust to the charitable organization after the time at which the donor ceased to be treated as the owner of the trust.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1970, A contributes to a church in trust a 9-year irrevocable income interest in property. Both A and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is an annuity-trust interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to A. By reference to Table B in § 20.2031–10(f) of this chapter, it is found that the figure in column (2) opposite 9 years is 6.8017. The present value of the annuity is therefore $3,400.85 ($500×6.8017). The present value of the income interest and A's charitable contribution for 1970 is $3,400.85.

Example (2). (a) On January 1, 1970, B contributes to a church in trust a 9-year irrevocable income interest in property. Both B and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the trust will pay to the church at the end of each year for 9 years, 5 percent of the fair market value of all property in the trust at the beginning of the year. The income interest is a unitrust interest as defined in subparagraph (2)(ii) of this paragraph; upon termination of such interest the residue of the trust is to revert to B.

(b) By reference to Table F in § 1.664–4(b)(5), the adjusted payout rate is 4.717 percent (5 percent × 0.943396). The present value of the reversion is $6,473.75, computed by reference to Table D in § 1.664–4(b)(5), as follows:

Factor at 4.6 percent for 9 years	0.654539
Factor at 4.8 percent for 9 years	.642292
Difference	.012247

Interpolation adjustment:

$$\frac{4.717\% - 4.6\%}{0.2\%} = \frac{\quad}{0.012247}$$

$$\times = 0.007164$$

Factor at 4.6 percent for 9 years	.654539
Less: Interpolation adjustment	.007164
Interpolated factor	.647375
Present value of reversion ($10,000 ×0.647375)	$6,473.75

(c) The present value of the income interest and B's charitable contribution for 1970 is $3,526.25 ($10,000—$6,473.75).

Example (3). (a) On January 1, 1970, C contributes to a church in trust a 9-year irrevocable income interest in property. Both C and the trust report income on a calendar year basis. The fair market value of the property placed in trust is $10,000. The trust instrument provides that the church will receive an annuity of $500, payable annually at the end of each year for 9 years. The income interest is an annuity trust interest as defined in subparagraph (2)(i) of this paragraph; upon termination of such interest the residue of the trust is to revert to C. C's charitable contribution for 1970 is $3,400.85, determined as provided in example (1). The trust earns income of $600 in 1970, $400 in 1971, and $500 in 1972, all of which is taxable to C under section 671. The church is paid $500 at the end of 1970, 1971, and 1972, respectively. On December 31, 1972, C dies and ceases to be treated as the owner of the income interest under section 673.

(b) Pursuant to subparagraph (4) of this paragraph, the discounted value as of January 1, 1970, of the amounts paid to the church by the trust is $1,336.51, determined by reference to column (4) of Table B in § 20.2031–10(f) of this chapter, as follows:

Annuity		Years from Jan. 1, 1970, to payment date	Discount factor	Discounted value as of Jan. 1, 1970
Payment date	Amount paid			
Dec. 31, 1970	$500	1	0.943396	$471.70
Dec. 31, 1971	500	2	.889996	445.00
Dec. 31, 1972	500	3	.839619	419.81
Total discounted value				1,336.51

(c) Pursuant to subparagraph (4) of this paragraph, there must be included in C's gross income for 1972 the amount of $2,064.34 ($3,400.85 less $1,336.51).

(d) For deduction by the trust for amounts paid to the church after December 31, 1972, see section 642(c)(1) and the regulations thereunder.

(d) *Denial of deduction for certain contributions by a trust.* (1) If by reason of section 170(f)(2)(B) and paragraph (c) of this section a charitable contributions deduction is allowed under section 170 for the fair market value of an income interest transferred in trust, neither the grantor of the income interest, the trust, nor any other person shall be allowed a deduction under section 170 or any other section for the amount of any charitable contribution made by the trust with respect to, or in fulfillment of, such income interest.

(2) Section 170(f)(2)(C) and subparagraph (1) of this paragraph shall not be construed, however, to—

(i) Disallow a deduction to the trust, pursuant to section 642(c)(1) and the regulations thereunder, for amounts paid by the trust after the grantor ceases to be treated as the owner of the income interest for purposes of applying section 671 and which are not taken into account in determining the amount of recapture under paragraph (c)(4) of this section, or

(ii) Disallow a deduction to the grantor under section 671 and § 1.671–2(c) for a charitable contribution made by the trust in excess of the contribution required to be made by the trust under the terms of the trust instrument with respect to, or in fulfillment of, the income interest.

(3) Although a deduction for the fair market value of an income interest in property which is less than the donor's entire interest in the property and which the donor transfers in trust is disallowed under section 170 because such interest is not an annuity trust interest, or a unitrust interest, as defined in paragraph (c)(2) of this section, the donor may be entitled to a deduction under section 671 and § 1.671–2(c) for any charitable contributions made by the trust if he is treated as the owner of such interest for purposes of applying section 671.

(e) *Effective date.* This section applies only to transfers in trust made after July 31, 1969.

§ 1.170A–7 Contributions not in trust of partial interests in property.

(a) *In general.* (1) In the case of a charitable contribution, not made by a transfer in trust, of any interest in property which consists of less than the donor's entire interest in such property, no deduction is allowed under section 170 for the value of such interest unless the interest is an interest described in paragraph (b) of this section. See section 170(f)(3)(A). For purposes of this section, a contribution of the right to use property which the donor owns, for example, a rent-free lease, shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(2) (i) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. Thus, if securities are given to A for life, with the remainder over to B, and B makes a charitable contribution of his remainder interest to an organization described in section 170(c), a deduction is allowed under section 170 for the present value of B's remainder interest in the securities. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid section 170(f)(3)(A), the deduction will not be allowed. Thus, for example, assume that a taxpayer desires to contribute to a charitable organization an income interest in property held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer transfers the remainder interest in such property to his son and immediately thereafter contributes the income interest to a charitable organization, no deduction shall be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the retained income interest. In further illustration, assume that a taxpayer desires to contribute to a charitable organization the reversionary interest in certain stocks and bonds held by him, which is not of a type described in paragraph (b)(2) of this section. If the taxpayer grants a life estate in such property to his son and immediately thereafter contributes the reversionary interest to a charitable organization, no deduction will be allowed under section 170 for the contribution of the taxpayer's entire interest consisting of the reversionary interest.

(ii) A deduction is allowed without regard to this section for a contribution of a partial interest in property if such contribution constitutes part of a charitable contribution not in trust in which all interests of the taxpayer in the property are given to a charitable organization described in section 170(c). Thus, if on March 1, 1971, an income interest in property is given not in trust to a church and the remainder interest in the property is given not in trust to an educational organization described in section 170(b)(1)(A), a deduction is allowed for the value of such property.

(3) A deduction shall not be disallowed under section 170(f)(3)(A) and this section merely because the interest which passes to, or is vested in, the charity may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A–1.

(b) *Contributions of certain partial interests in property for which a deduction is allowed.* A deduction is allowed under section 170 for a contribution not in trust of a partial interest which is less than the donor's entire interest in property and which qualifies under one of the following subparagraphs:

(1) *Undivided portion of donor's entire interest.* (i) A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an undivided portion of a donor's entire interest in property. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. For example, assuming that in 1967 B has been given a life estate in an office building for the life of A and that B has no other interest in the office building, B will be allowed a deduction under section 170 for his contribution in 1972 to charity of a one-half interest in such life estate in a transfer which is not made in trust. Such contribution by B will be considered a contribution of an undivided portion of the donor's entire interest in property. In further illustration, assuming that in 1968 C has been given the remainder interest in a trust created under the will of his father and C has no other interest in the trust, C will be allowed a deduction under section 170 for his contribution in 1972 to charity of a 20-percent interest in such remainder interest in a transfer which is not made in trust. Such contribution by C will be considered a contribution of an undivided portion of the donor's entire interest in property. If a taxpayer owns 100 acres of land and makes a contribution of 50 acres to a charitable organization, the charitable contribution is allowed as a deduction under section 170. A deduction is allowed under section 170 for a contribution of property to a charitable organization whereby such organization is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, for purposes of this subparagraph a charitable contribution in perpetuity of an interest in property not intrust where the donor transfers some specific rights and retains other substantial rights will not be considered a contribution of an individual portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. Thus, for example, a deduction is not allowable for the value of an immediate and perpetual gift not in trust of an interest in original historic motion picture films to a charitable organization where the donor retains the exclusive right to make reproductions of such films and to exploit such reproductions commercially.

(ii) For purposes of this subparagraph a charitable contribution of an open space easement in gross in perpetuity shall be considered a contribution of an undivided portion of the donor's entire interest in property to which section 170(f)(3)(A) does not apply. For this purpose an easement in gross is a mere personal interest in, or right to use, the land of another; it is not supported by a dominant estate but is attached to, and vested in, the person to whom it is granted. Thus, for example, a deduction is allowed under section 170 for the value of a restrictive easement gratuitously conveyed to the United States in perpetuity whereby the donor agrees to certain restrictions on the use of his property, such as, restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs.

(2) *Partial interests in property which would be deductible in trust.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of a partial interest in property which is less than the donor's entire interest in the property and which would be deductible under section 170(f)(2) and § 1.170A–6 if such interest had been transferred in trust.

(3) *Contribution of a remainder interest in a personal residence.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a personal residence which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a personal residence and retains an estate in such property for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term "personal residence" means any property used by the taxpayer as his personal residence even though it is not used as his principal residence. For example, the taxpayer's vacation home may be a personal residence for purposes of this subparagraph. The term "personal residence" also includes stock owned by a taxpayer as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)) if the dwelling which the taxpayer is entitled to occupy as such stockholder is used by him as his personal residence.

(4) *Contribution of a remainder interest in a farm.* A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a farm

which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170 (c) a remainder interest in a farm and retains an estate in such farm for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f) (3)(B)(i) and this subparagraph, the term "farm" means any land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(c) *Valuation of a partial interest in property.* The amount of the deduction under section 170 in the case of a charitable contribution of a partial interest in property to which paragraph (b) of this section applies is the fair market value of the partial interest at the time of the contribution. See § 1.170A–1(c). The fair market value of such partial interest must be determined in accordance with § 20.2031–10 of this chapter (Estate Tax Regulations), except that, in the case of a charitable contribution of a remainder interest in real property which is not transferred in trust, the fair market value of such interest must be determined in accordance with section 170(f) (4) and § 1.170A–12. In the case of a charitable contribution of a remainder interest in the form of a remainder interest in a pooled income fund, a charitable remainder annuity trust, or a charitable remainder unitrust, the fair market value of the remainder unitrust, the fair market value of the remainder interest must be determined as provided in paragraph (b)(2) of § 1.170A–6. However, in some cases a reduction in the amount of a charitable contribution of the remainder interest may be required. See section 170(e) and paragraph (a) of § 1.170A–4.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). A, an individual owning a 10-story office building, donates the rent-free use of the top floor of the building for the year 1971 to a charitable organization. Since A's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

Example (2). In 1971, B contributes to a charitable organization an undivided one-half interest in 100 acres of land, whereby as tenants in common they share in the economic benefits from the property. The present value of the contributed property is $50,000. Since B's contribution consists of an undivided portion of his entire interest in the property to which section 170(f)(3)(B) applies, he is allowed a deduction in 1971 for his charitable contribution of $50,000.

Example (3). In 1971, D loans $10,000 in cash to a charitable organization and does not require the organization to pay any interest for the use of the money. Since D's contribution consists of a partial interest to which section 170(f)(3)(A) applies, he is not entitled to a charitable contributions deduction for the contribution of such partial interest.

(e) *Effective date.* This section applies only to contributions made after July 31, 1969.

§ 1.170A–8 Limitations on charitable deductions by individuals.

(a) *Percentage limitations*—(1) *In general.* An individual's charitable contributions deduction is subject to 20-, 30-, and 50-percent limitations unless the individual qualifies for the unlimited charitable contributions deduction under section 170(b)(1)(C). For a discussion of these limitations and examples of their application, see paragraphs (b) through (f) of this section. If a husband and wife make a joint return, the deduction for contributions is the aggregate of the contributions made by the spouses, and the limitations in section 170(b) and this section are based on the aggregate contribution base of the spouses. A charitable contribution by an individual to or for the use of an organization described in section 170(c) may be deductible even though all, or some portion, of the funds of the organization may be used in foreign countries for charitable or educational purposes.

(2) *"To" or "for the use of" defined.* For purposes of section 170, a contribution of an income interest in property, whether or not such contributed interest is transferred in trust, for which a deduction is allowed under section 170(f)(2)(B) or (3)(A) shall be considered as made "for the use of" rather than "to" the charitable organization. A contribution of a remainder interest in property, whether or not such contributed interest is transferred in trust, for which a deduction is allowed under section 170(f)(2)(A) or (3)(A), shall be considered as made "to" the charitable organization except that, if such interest is transferred in trust and, pursuant to the terms of the trust instrument, the interest contributed is, upon termination of the predecessor estate, to be held in trust for the benefit of such organization, the contribution shall be considered as made "for the use of" such organization. Thus, for example, assume that A transfers property to a charitable remainder annuity trust described in section 664(d)(1) which is required to pay to B for life an annuity equal to 5 percent of the initial fair market value of the property transferred in trust. The trust instrument provides that after B's death the remainder interest in the trust is to be transferred to M Church or, in the event M Church is not an organization described in section 170(c) when the amount is to be irrevocably transferred to such church, to an organization which is described in section 170(c) at that time. The contribution by A of the remainder interest shall be considered as made "to" M Church. However, if in the trust instrument A had directed that after B's death the remainder interest is to be held in trust for the benefit of M Church, the contribution shall be considered as made "for the use of" M Church. This subparagraph does not apply to the contribution of a partial interest in property, or of an undivided portion of such partial interest, if such partial interest is the donor's entire interest in the property and such entire interest was not created to avoid section 170(f)(2) or (3)(A). See paragraph (a)(2) of § 1.170A–6 and paragraphs (a)(2)(i) and (b)(1) of § 1.170A–7.

(b) *50-percent limitation.* An individual may deduct charitable contributions made during a taxable year to any one or more section 170(b)(1)(A) organizations, as defined in § 1.170A–9, to the extent that such contributions in the aggregate do not exceed 50 percent of his contribution base, as defined in section 170(b)(1)(F) and paragraph (e) of this section, for the taxable year. However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. To qualify for the 50-percent limitation the contributions must be made "to," and not merely "for the use of," one of the specified organizations. A contribution to an organization referred to in section 170(c)(2), other than a section 170(b)(1)(A) organization, will not qualify for the 50-percent limitation even though such organization makes the contribution available to an organization which is a section 170(b)(1)(A) organization. For provisions relating to the carryover of contributions in excess of 50-percent of an individual's contribution base see section 170(d)(1) and paragraph (b) of § 1.170A–10.

(c) *20-percent limitation.* (1) An individual may deduct charitable contributions made during a taxable year—

(i) To any one or more charitable organizations described in section 170(c) other than section 170(b)(1)(A) organizations, as defined in § 1.170A–9, and,

(ii) For the use of any charitable organization described in section 170(c),

to the extent that such contributions in the aggregate do not exceed the lesser of the limitations under subparagraph (2) of this paragraph.

(2) For purposes of subparagraph (1) of this paragraph the limitations are—

(i) 20 percent of the individual's contribution base, as defined in paragraph (e) of this section, for the taxable year, or

(ii) The excess of 50 percent of the individual's contribution base, as so defined, for the taxable year over the total amount of the charitable contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section, determined by first reducing the amount of such contributions under section 170(e)(1) and paragraph (a) of § 1.170A–4 but without applying the 30-percent limitation under section 170(b)(1)(D)(i) and paragraph (d)(1) of this section.

However, see paragraph (d) of this section for a limitation on the amount of charitable contributions of 30-percent capital gain property. If an election under section 170(b)(1)(D)(iii) and paragraph (d)(2) of this section applies

to any contributions of 30-percent capital gain property made during the taxable year or carried over to the taxable year, the amount allowed for the taxable year under paragraph (b) of this section with respect to such contributions for purposes of applying subdivision (ii) of this subparagraph shall be the reduced amount of such contributions determined by applying paragraph (d)(2) of this section.

(d) *30-percent limitation*—(1) *In general.* An individual may deduct charitable contributions of 30-percent capital gain property, as defined in subparagraph (3) of this paragraph, made during a taxable year to or for the use of any charitable organization described in section 170(c) to the extent that such contributions in the aggregate do not exceed 30-percent of his contribution base, as defined in paragraph (e) of this section, subject, however, to the 50- and 20-percent limitations prescribed by paragraphs (b) and (c) of this section. For purposes of applying the 50-percent and 20-percent limitations described in paragraphs (b) and (c) of this section, charitable contributions of 30-percent capital gain property paid during the taxable year, and limited as provided by this subparagraph, shall be taken into account after all other charitable contributions paid during the taxable year. For provisions relating to the carryover of certain contributions of 30-percent capital gain property in excess of 30-percent of an individual's contribution base, see section 170 (b) (1) (D) (ii) and paragraph (c) of § 1.170A–10.

(2) *Election by an individual to have section 170(e)(1)(B) apply to contributions*—(i) *In general.* (*a*) An individual may elect under section 170(b)(1)(D)(iii) for any taxable year to have the reduction rule of section 170(e)(1)(B) and paragraph (a) of § 1.170A–4 apply to all his charitable contributions of 30-percent capital gain property made during such taxable year or carried over to such taxable year from a taxable year beginning after December 31, 1969. If such election is made such contributions shall be treated as contributions of section 170(e) capital gain property in accordance with paragraph (b)(2)(iii) of § 1.170A–4. The election may be made with respect to contributions of 30-percent capital gain property carried over to the taxable year even though the individual has not made any contribution of 30-percent capital gain property in such year. If such an election is made, section 170(b)(1)(D) (i) and (ii) and subparagraph (1) of this paragraph shall not apply to such contributions made during such year. However, such contributions must be reduced as required under section 170(e)(1)(B) and paragraph (a) of § 1.170A–4.

(*b*) If there are carryovers to such taxable year of charitable contributions of 30-percent capital gain property made in preceding taxable years beginning after December 31, 1969, the amount of such contributions in each such preceding year shall be reduced as if section 170(e)(1)(B) had applied to them in the preceding year and shall be carried over to the taxable year and succeeding taxable years under section 170(d)(1) and paragraph (b) of § 1.170A–10 as contributions of property other than 30-percent capital gain property. For purposes of applying the immediately preceding sentence, the percentage limitations under section 170(b) for the preceding taxable year and for any taxable years intervening between such year and the year of the election shall not be redetermined and the amount of any deduction allowed for such years under section 170 in respect of the charitable contributions of 30-percent capital gain property in the preceding taxable year shall not be redetermined. However, the amount of the deduction so allowed under section 170 in the preceding taxable year must be subtracted from the reduced amount of the charitable contributions made in such year in order to determine the excess amount which is carried over from such year under section 170(d)(1). If the amount of the deduction so allowed in the preceding taxable year equals or exceeds the reduced amount of the charitable contributions, there shall be no carryover from such year to the year of the election.

(*c*) An election under this subparagraph may be made for each taxable year in which charitable contributions of 30-percent capital gain property are made or to which they are carried over under section 170(b)(1)(D)(ii). If there are also carryovers under section 170(d)(1) to the year of the election by reason of an election made under this subparagraph for a previous taxable year, such carryovers under section 170(d)(1) shall not be redetermined by reason of the subsequent election.

(ii) *Husband and wife making joint return.* If a husband and wife make a joint return of income for a contribution year and one of the spouses elects under this subparagraph in a later year when he files a separate return, or if a spouse dies after a contribution year for which a joint return is made, any excess contribution of 30-percent capital gain property which is carried over to the election year from the contribution year shall be allocated between the husband and wife as provided in paragraph (d)(4)(i) and (iii) of § 1.170A–10. If a husband and wife file separate returns in a contribution year, any election under this subparagraph in a later year when a joint return is filed shall be applicable to any excess contributions of 30-percent capital gain property of either taxpayer carried over from the contribution year to the election year. The immediately preceding sentence shall also apply where two single individuals are subsequently married and file a joint return. A remarried individual who filed a joint return with his former spouse for a contribution year and thereafter files a joint return with his present spouse shall treat the carryover to the election year as provided in paragraph (d)(4)(ii) of § 1.170A–10.

(iii) *Manner of making election.* The election under subdivision (i) of this subparagraph shall be made by attaching to the income tax return for the election year a statement indicating that the election under section 170(b)(1)(D)(iii) and this subparagraph is being made. If there is a carryover to the taxable year of any charitable contributions of 30-percent capital gain property from a previous taxable year or years, the statement shall show a recomputation, in accordance with this subparagraph and § 1.170A–4, of such carryover, setting forth sufficient information with respect to the previous taxable year or any intervening year to show the basis of the recomputation. The statement shall indicate the district director, or the director of the internal revenue service center, with whom the return for the previous taxable year or years was filed, the name or names in which such return or returns were filed, and whether each such return was a joint or separate return.

(3) *30-percent capital gain property defined.* If there is a charitable contribution of a capital asset which, if it were sold by the donor at its fair market value at the time of its contribution, would result in the recognition of gain all, or any portion, of which would be long-term capital gain and if the amount of such contribution is not required to be reduced under section 170(e)(1)(B) and § 1.170A–4(a)(2), such capital asset shall be treated as "30-percent capital gain property" for purposes of section 170 and the regulations thereunder. For such purposes any property which is property used in the trade or business, as defined in section 1231(b), shall be treated as a capital asset. However, see paragraph (b)(4) of § 1.170A–4. For the treatment of such property as section 170(e) capital gain property, see paragraph (b)(2)(iii) of § 1.170A–4.

(e) *Contribution base defined.* For purposes of section 170 the term "contribution base" means adjusted gross income under section 62, computed without regard to any net operating loss carryback to the taxable year under section 172. See section 170(b)(1)(F).

(f) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170 (c). Accordingly, B is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170 (b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $10,000 ([50% of $100,000]—$40,000 (contributions allowed under section

170(b)(1)(A) and paragraph (b) of this section)). Under section 170 (b)(1)(D)(ii) and (d)(1) and § 1.170A–10, B is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (2). C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $40,000 in 30-percent capital gain property to section 170(b)(1)(A) organizations and of $30,000 in cash to other organizations described in section 170(c). The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D) and paragraph (d) of this section; accordingly section 170(b)(1)(B)(ii) limits the deduction for the $30,000 cash contribution to $10,000 ([50% of $100,000]—$40,000). The amount of the contribution of 30-percent capital gain property is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Accordingly, C's charitable contributions deduction for 1970 is limited to $40,000 ($10,000+$30,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, C is allowed a carryover to 1971 of $10,000 ($40,000—$30,000) in respect of his contributions of 30-percent capital gain property. C is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 cash ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (3). (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170(c). During 1971 D makes charitable contributions to a section 170(b)(1)(A) organization of $12,000, consisting of cash of $1,000 and $11,000 in 30-percent capital gain property. His contribution base for 1971 is $10,000.

(b) For 1970, D is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170(b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $10,000 ([50% of $100,000]—$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). D is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, D is allowed a charitable contributions deduction of $4,000, consisting of $1,000 cash and $3,000 of the 30-percent capital gain property (30% of $10,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, D is allowed a carryover to 1972 of $8,000 ($11,000—$3,000) in respect of his contribution of 30-percent capital gain property in 1971.

Example (4). (a) E, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000 in cash, of which $40,000 is given to section 170(b)(1)(A) organizations and $30,000 is given to other organizations described in section 170(c). During 1971 E makes charitable contributions to a section 170(b)(1)(A) organization of $14,000 consisting of cash of $3,000 and $11,000 in 30-percent capital gain property. His contribution base for 1971 is $10,000.

(b) For 1970, E is allowed a charitable contributions deduction of $50,000 (50% of $100,000), which consists of the $40,000 contributed to section 170(b)(1)(A) organizations and $10,000 of the $30,000 contributed to the other organizations. Under paragraph (c) of this section, only $10,000 of the $30,000 contributed to the other organizations is allowed as a deduction since such contribution of $30,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or ($10,000 ([50% of $100,000]—$40,000 (contributions allowed under section 170(b)(1)(A) and paragraph (b) of this section)). E is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 ($30,000—$10,000) not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(c) For 1971, E is allowed a charitable contributions deduction of $5,000 (50% of $10,000), consisting of $3,000 cash and $2,000 of the $3,000 (30% of $10,000) 30-percent capital gain property which is taken into account. This result is reached because, as provided in section 170(b)(1)(D)(i) and paragraph (d)(1) of this section, cash contributions are taken into account before charitable contributions of 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and (d)(1) and paragraphs (b) and (c) of § 1.170A–10, E is allowed a carryover of $9,000 ([$11,000—$3,000] plus [$6,000—$5,000]) to 1972 in respect of this contribution of 30-percent capital gain property in 1971.

Example (5). In 1970, C, a calendar-year individual taxpayer, contributes to section 170(b)(1)(A) organizations the amount of $8,000, consisting of $3,000 in cash and $5,000 in 30-percent capital gain property. In 1970, C also makes charitable contributions of $8,500 in 30 percent capital gain property to other organizations described in section 170(c). C's contribution base for 1970 is $20,000. The 20-percent limitation in section 170(b)(1)(B) and paragraph (c) of this section is applied before the 30-percent limitation in section 170(b)(1)(D)(i) and paragraph (d) of this section; accordingly, section 170(b)(1)(B)(ii) limits the deduction for the $8,500 of contributions to the other organizations described in section 170 (c) to $2,000 ([50% of $20,000]—[$3,000+$5,000]). However, the total amount of contributions of 30-percent capital gain property which is allowed as a deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $6,000 (30% of $20,000), consisting of the $5,000 contribution to the section 170(b)(1)(A) organizations and $1,000 of the contributions to the other organizations described in section 170 (c). Accordingly, C is allowed a charitable contributions deduction for 1970 of $9,000, which consists of $3,000 cash and $6,000 of the $13,500 of 30-percent capital gain property. C is not allowed to carry over to 1971 or any other year the remaining $7,500 because his contributions of 30-percent capital gain property for 1970 to section 170(b)(1)(A) organizations amount only to $5,000 and do not exceed $6,000 (30% of $20,000). Thus, the requirement of section 170(b)(1)(D)(ii) is not satisfied.

Example (6). During 1971, D, a calendar-year individual taxpayer, makes a charitable contribution to a church of $8,000, consisting of $5,000 in cash and $3,000 in 30-percent capital gain property. For such year, D's contribution base is $10,000. Accordingly, D is allowed a charitable contributions deduction for 1971 of $5,000 (50% of $10,000) of cash. Under section 170(d)(1) and paragraph (b) of § 1.170A–10, D is allowed a carryover to 1972 of his $3,000 contribution of 30-percent capital gain property, even though such amount does not exceed 30 percent of his contribution base for 1971.

Example (7). In 1970, E, a calendar-year individual taxpayer, makes a charitable contribution to a section 170(b)(1)(A) organization in the amount of $10,000, consisting of $8,000 in 30-percent capital gain property and of $2,000 (after reduction under section 170(e)) in other property. E's contribution base of 1970 is $20,000. Accordingly, E is allowed a charitable contributions deduction for 1970 of $8,000, consisting of the $2,000 of property the amount of which was reduced under section 170(e) and $6,000 (30% of $20,000) of the 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, E is allowed to carry over to 1971 $2,000 ($8,000—$6,000) of his contribution of 30-percent capital gain property.

Example (8). (a) In 1972, F, calendar-year individual taxpayer, makes a charitable contribution to a church of $4,000, consisting of $1,000 in cash and $3,000 in 30-percent capital gain property. In addition, F makes a charitable contribution in 1972 of $2,000 in cash to an organization described in section 170(c)(4). F also has a carryover from 1971 under section 170(d)(1) of $5,000 (none of which consists of contributions of 30-percent capital gain property) and a carryover from 1971 under section 170(b)(1)(D)(ii) of $6,000 of contributions of 30-percent capital gain property. F's contribution base for 1972 is $11,000.

Accordingly, F is allowed a charitable contributions deduction for 1972 of $5,500 (50% of $11,000), which consists of $1,000 cash contributed in 1972 to the church, $3,000 of 30-percent capital gain property contributed in 1972 to the church, and $1,500 (carryover of $5,000 but not to exceed [$5,500—($1,000+$3,000)]) of the carryover from 1971 under section 170(d)(1).

(b) No deduction is allowed for 1972 for the contribution in that year of $2,000 cash to the section 170(c)(4) organization since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0([50% of $11,000]—[$1,000+$1,500+$3,000]). Moreover, F is not allowed a carryover to 1973 or to any other year for any of such $2,000 cash contributed to the section 170(c)(4) organization.

(c) Under section 170(d)(1) and paragraph (b) of § 1.170A–10, F is allowed a carryover to 1973 from 1971 of $3,500 ($5,000—$1,500) of contributions of other than 30-percent capital gain property. Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, F is allowed a carryover to 1973 from 1971 of $6,000 ($6,000—$0 of such carryover treated as paid in 1972) of contributions of 30-percent capital gain property. The portion of such $6,000 carryover from 1971 which is treated as paid in 1972 is $0 ([50% of $11,000]—$4,000 contributions to the church in 1972 plus $1,500 of section 170(d)(1) carryover treated as paid in 1972]).

Example (9). (a) In 1970, A, a calendar-year individual taxpayer, makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of $60,000 and an adjusted basis of $10,000. A's contribution base for 1970 is $50,000, and he makes no other charitable contributions in that year. A does not elect for 1970 under paragraph (d)(2) of this section to have section 170(e)(1)(B) apply to such contribution. Accordingly, under section 170(b)(1)(D)(i) and paragraph (d) of this section, A is allowed a charitable contributions deduction for 1970 of $15,000 (30% of $50,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A–10, A is allowed a

carryover to 1971 of $45,000 ($60,000—$15,000) for his contribution of 30-percent capital gain property.

(b) In 1971, A makes a charitable contribution to a church of 30-percent capital gain property having a fair market value of $11,000 and an adjusted basis of $10,000. A's contribution base for 1971 is $60,000, and he makes no other charitable contributions in that year. A elects for 1971 under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4 apply to his contribution of $11,000 in that year and to his carryover of $45,000 from 1970. Accordingly, he is required to recompute his carryover from 1970 as if section 170(e)(1)(B) had applied to his contribution of 30-percent capital gain property in that year.

(c) If section 170(e)(1)(B) had applied in 1970 to his contribution of 30-percent capital gain property, A's contribution would have been reduced from $60,000 to $35,000, the reduction of $25,000 being 50 percent of the gain of $50,000 ($60,000—$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of the contribution in 1970. Accordingly, by taking the election under paragraph (d)(2) of this section into account, A has a recomputed carryover to 1971 of $20,000 ($35,000—$15,000) of his contribution of 30-percent capital gain property in 1970. However, A's charitable contributions deduction of $15,000 allowed for 1970 is not recomputed by reason of the election.

(d) Pursuant to the election for 1971, the contribution of 30-percent capital gain property for 1971 is reduced from $11,000 to $10,500, the reduction of $500 being 50 percent of the gain of $1,000 ($11,000—$10,000) which would have been recognized as long-term capital gain if the property had been sold by A at its fair market value at the time of its contribution in 1971.

(e) Accordingly, A is allowed a charitable contributions deduction for 1971 of $30,000 (total contributions of $30,500 [$20,000+$10,500] but not to exceed 50% of $60,000).

(f) Under section 170(d)(1) and paragraph (b) of § 1.170A-10, A is allowed a carryover of $500 ($30,500—$30,000) to 1972 and the 3 succeeding taxable years. The $500 carryover, which by reason of the election is no longer treated as a contribution of 30-percent capital gain property, is treated as carried over under paragraph (b) of § 1.170A-10 from 1970 since in 1971 current year contributions are deducted before contributions which are carried over from preceding taxable years.

Example (10). The facts are the same as in example (9) except that A also makes a charitable contribution in 1971 of $2,000 cash to a private foundation not described in section 170(b)(1)(E) and that A's contribution base for that year is $62,000, instead of $60,000. Accordingly, A is allowed a charitable contributions deduction for 1971 of $31,000, determined in the following manner. Under section 170(b)(1)(A) and paragraph (b) of this section, A is allowed a charitable contributions deduction for 1971 of $30,500, consisting of $10,500 of property contributed to the church in 1971 and of $20,000 (carryover of $20,000 but not to exceed [($62,000×50%)—$10,500]) of contributions of property carried over to 1971 under section 170(d)(1) and paragraph (b) of § 1.170A-10. Under section 170(b)(1)(B) and paragraph (c) of this section, A is allowed a charitable contributions deduction for 1971 of $500 ([50% of $62,000]—[$10,500+$20,000]) of cash contributed to the private foundation in that year. A is not allowed a carryover to 1972 or to any other taxable year for any of the $1,500 ($2,000—$500) cash not deductible in 1971 under section 170(b)(1)(B) and paragraph (c) of this section.

Example (11). The facts are the same as in example (9) except that A's contribution base for 1970 is $120,000. Thus, before making the election under paragraph (d)(2) of this section for 1971, A is allowed a charitable contributions deduction for 1970 of $36,000 (30% of $120,000) and is allowed a carryover to 1971 of $24,000 ($60,000—$36,000). By making the election for 1971, A is required to recompute the carryover from 1970, which is reduced from $24,000 to zero, since the charitable contributions deduction of $36,000 allowed for 1970 exceeds the reduced $35,000 contribution for 1970 which may be taken into account by reason of the election for 1971. Accordingly, A is allowed a deduction for 1971 of $10,500 and is allowed no carryover to 1972, since the reduced contribution for 1971 ($10,500) does not exceed the limitation of $30,000 (50% of $60,000) for 1971 which applies under section 170(d)(1) and paragraph (b) of § 1.170A-10. A's charitable contributions deduction of $36,000 allowed for 1970 is not recomputed by reason of the election. Thus, it is not to A's advantage to make the election under paragraph (d)(2) of this section.

Example (12). (a) B, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes charitable contributions of $70,000, consisting of $50,000 in 30-percent capital gain property contributed to a church and $20,000 in cash contributed to a private foundation not described in section 170(b)(1)(E). For 1971, B's contribution base is $40,000, and in that year he makes a charitable contribution of $5,000 in cash to such private foundation. During the years involved B makes no other charitable contributions.

(b) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1970 of $30,000 of 30-percent capital gain property (contribution of $30,000 but not to exceed $50,000 [50% of $100,000]). No deduction is allowed for 1970 for the contribution in that year of $20,000 of cash to the private foundation since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0 ([50% of $100,000]—$50,000, the amount of the contribution of 30-percent capital gain property).

(c) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1971 of $20,000 ($50,000—[30% of $100,000]) of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1971 or to any other taxable year for any of the $20,000 cash contribution in 1970 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(d) The amount of the contribution of 30-percent capital gain property which may be taken into account for 1971 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $12,000 (30% of $40,000).

Accordingly, under section 170(b)(1)(A) and paragraph (b) of this section B is allowed a deduction for 1971 of $12,000 of 30-percent capital gain property (contribution of $12,000 but not to exceed $20,000 [50% of $40,000]). No deduction is allowed for 1971 for the contribution in that year of $5,000 of cash to the private foundation, since section 170(b)(1)(B)(ii) and paragraph (c) of this section limit the deduction for such contribution to $0 ([50% of $40,000]—$20,000 carryover of 30-percent capital gain property from 1970).

(e) Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, B is allowed a carryover to 1972 of $8,000 ($20,000—[30% of $40,000]) of his contribution in 1970 of 30-percent capital gain property. B is not allowed a carryover to 1972 or to any other taxable year for any of the $5,000 cash contribution for 1971 which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (13). D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. On March 1, 1970, he contributes to a church intangible property to which section 1245 applies which has a fair market value of $60,000 and an adjusted basis of $10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 $20,000 of the gain of $50,000 would have been treated as ordinary income and $30,000 would have been long-term capital gain. Since the property contributed is ordinary income property within the meaning of paragraph (b)(1) of § 1.170A-4, D's contribution of $60,000 is reduced under paragraph (a)(1) of such section to $40,000 ($60,000—$20,000 ordinary income). However, since the property contributed is also 30-percent capital gain property within the meaning of paragraph (d)(3) of this section, D's deduction for 1970 is limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000). Under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10, D is allowed to carry over to 1971 $10,000 ($40,000—$30,000) of his contribution of 30-percent capital gain property.

Example (14). C, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $50,000. During 1970 he makes charitable contributions to a church of $57,000, consisting of $2,000 cash and of 30-percent capital gain property with a fair market value of $55,000 and an adjusted basis of $15,000. In addition, C contributes $3,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, C elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 C's contribution of property to the church is reduced from $55,000 to $35,000, the reduction of $20,000 being 50 percent of the gain of $40,000 ($55,000—$15,000) which would have been recognized as long-term capital gain if the property had been sold by C at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, C is allowed a charitable contributions deduction for 1970 of $25,000 ([$2,000+$35,000] but not to exceed [$50,000×50%]). Under section 170(d)(1) and paragraph (b) of § 1.170A-10, C is allowed a carryover from 1970 to 1971 of $12,000 ($37,000—$25,000). No deduction is allowed for 1970 for the contribution in that year of $3,000 cash to the private foundation since section 170(b)(1)(B) and paragraph (c) of this section limit the deduction for such contribution to the smaller of $10,000 ($50,000×20%) or $0 ([$50,000×50%]—$25,000). C is not allowed a carryover from 1970 for any of the $3,000 cash contribution in that year which is not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

Example (15). (a) D, an individual, reports his income on the calendar-year basis and for 1970 has a contribution base of $100,000. During 1970 he makes a charitable contribution to a church of 30-percent capital gain property with a fair market value of $40,000 and an adjusted basis of $21,000. In

addition, he contributes $23,000 cash in 1970 to a private foundation not described in section 170(b)(1)(E). For 1970, D elects under paragraph (d)(2) of this section to have section 170(e)(1)(B) and § 1.170A-4(a) apply to his contribution of property to the church. Accordingly, for 1970 D's contribution of property to the church is reduced from $40,000 to $30,500, the reduction of $9,500 being 50 percent of the gain of $19,000 ($40,000 − $21,000) which would have been recognized as long-term capital gain if the property had been sold by D at its fair market value at the time of its contribution to the church. Under section 170(b)(1)(A) and paragraph (b) of this section, D is allowed a charitable contributions deduction for 1970 of $30,500 for the property contributed to the church. In addition, under section 170(b)(1)(B) and paragraph (c) of this section D is allowed a deduction of $19,500 for the cash contributed to the private foundation, since such contribution of $23,000 is allowed to the extent of the lesser of $20,000 (20% of $100,000) or $19,500 ([$100,000 × 50%] − $30,500). D is not allowed a carryover to 1971 or to any other taxable year for any of the $3,500 ($23,000 − $19,500) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(b) If D had not made the election under paragraph (d)(2) of this section for 1970, his deduction for 1970 under section 170(a) for the $40,000 contribution of property to the church would have been limited by section 170(b)(1)(D)(i) and paragraph (d) of this section to $30,000 (30% of $100,000), and under section 170(b)(1)(D)(ii) and paragraph (c) of § 1.170A-10 he would have been allowed a carryover to 1971 of $10,000 ($40,000 − $30,000) for his contribution of such property. In addition, he would have been allowed under section 170(b)(1)(B)(ii) and paragraph (c) of this section for 1970 a charitable contributions deduction of $10,000 ([$100,000 × 50%] − $40,000) for the cash contributed to the private foundation. In such case, D would not have been allowed a carryover to 1971 or to any other taxable year for any of the $13,000 ($23,000 − $10,000) of cash not deductible under section 170(b)(1)(B) and paragraph (c) of this section.

(g) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969.

§ 1.170A-9 Definition of section 170(b)(1)(A) organization. [Reserved]

§ 1.170A-10 Charitable contributions carryovers of individuals.

(a) *In general.* (1) Section 170(d)(1), relating to carryover of charitable contributions in excess of 50 percent of contribution base, and section 170(b)(1)(D)(ii), relating to carryover of charitable contributions in excess of 30 percent of contribution base, provide for excess charitable contributions carryovers by individuals of charitable contributions to section 170(b)(1)(A) organizations described in § 1.170A-9. These carryovers shall be determined as provided in paragraphs (b) and (c) of this section. No excess charitable contributions carryover shall be allowed with respect to contributions "for the use of," rather than "to," section 170(b)(1)(A) organizations or with respect to contributions "to" or "for the use of" organizations which are not section 170(b)(1)(A) organizations. See § 1.170A-8(a)(2) for definitions of "to" or "for the use of" a charitable organization.

(2) The carryover provisions apply with respect to contributions made during a taxable year in excess of the applicable percentage limitation even though the taxpayer elects under section 144 to take the standard deduction in that year instead of itemizing the deduction allowable in computing taxable income for that year.

(3) For provisions requiring a reduction of the excess charitable contribution computed under paragraph (b)(1) or (c)(1) of this section when there is a net operating loss carryover to the taxable year, see paragraph (d)(1) of this section.

(4) The provisinos of section 170(b)(1)(D)(ii) and (d)(1) and this section do not apply to contributions by an estate; nor do they apply to a trust unless the trust is a private foundation which, pursuant to § 1.642(c)-4, is allowed a deduction under section 170 subject to the provisions applicable to individuals.

(b) *50-percent charitable contributions carryover of individuals*—(1) *Computation of excess of charitable contributions made in a contribution year.* Under section 170(d)(1), subject to certain conditions and limitations, the excess of—

(i) The amount of the charitable contributions made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in § 1.170A-9, over

(ii) 50 percent of his contribution base, as defined in section 170(b)(1)(F), for such contribution year,

shall be treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. However, such excess to the extent it consists of contributions of 30-percent capital gain property, as defined in § 1.170A-8(d)(3), shall be subject to the rules of section 170(b)(1)(D)(ii) and paragraph (c) of this section in the years to which it is carried over. A charitable contribution made in a taxable year beginning before January 1, 1970, to a section 170(b)(1)(A) organization and carried over to a taxable year beginning after December 31, 1969, under section 170(b)(5) (before its amendment by the Tax Reform Act of 1969) shall be treated in such taxable year beginning after December 31, 1969, as a charitable contribution of cash subject to the limitations of this paragraph, whether or not such carryover consists of contributions of 30-percent capital gain property or of ordinary income property described in § 1.170A-4(b)(1). For purposes of applying this paragraph and paragraph (c) of this section, such a carryover from a taxable year beginning before January 1, 1970, which is so treated as paid to a section 170(b)(1)(A) organization in a taxable year beginning after December 31, 1969, shall be treated as paid to such an organization under section 170(d)(1) and this section. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they make a charitable contribution in cash of $26,500 to a church and $1,000 to X (not a section 170(b)(1)(A) organization) and in 1971 they make a charitable contribution in cash of $19,000 to a church and $600 to X. They may claim a charitable contributions deduction of $25,000 in 1970, and the excess of $26,500 (contribution to the church) over $25,000 (50 percent of contribution base), or $1,500, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. No carryover is allowed with respect to the $1,000 contribution made to X in 1970. Since 50 percent of their contribution base for 1971 ($20,000) exceeds the charitable contributions of $19,000 made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $1,000 ($20,000 minus $19,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $500 constitutes an unused charitable contributions carryover. No deduction for 1971, and no carryover, are allowed with respect to the $600 contribution made to X in 1971.

Example (2). Assume the same facts as in example (1) except that H and W have a contribution base for 1971 of $42,000. Since 50 percent of their contribution base for 1971 ($21,000) exceeds by $2,000 the charitable contribution of $19,000 made by them in 1971 to the section 170(b)(1)(A) organization (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the full amount of the 1970 carryover of $1,500 is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971. They may also claim a charitable contribution of $500 ($21,000 − $20,500[$19,000 + $1,500]) with respect to the gift to X in 1971. No carryover is allowed with respect to the $100 ($600 − $500) of the contribution to X which is not deductible in 1971.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the lesser of the amounts computed under subdivisions (i) to (iii), inclusive, of this subparagraph:

(i) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding

taxable year to section 170(b)(1)(A) organizations, and

(b) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iii) In the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contribution in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section, which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivision (i)(a) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of § 1.170A-8. If a taxpayer, in any one of the 4 taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in such standard deduction year the lesser of the amounts determined under subdivisions (i) to (iii), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that B has a contribution base for 1970 of $20,000 and for 1971 of $30,000. Assume further that in 1970 B contributed $12,000 in cash to a church and in 1971 he contributed $13,500 in cash to the church. B may claim a charitable contributions deduction of $10,000 in 1970, and the excess of $12,000 (contribution to the church) over $10,000 (50 percent of B's contribution base), or $2,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution paid by B to a section 170(b)(1)(A) organization in the 5 taxable years succeeding 1970 in order of time. B may claim a charitable contributions deduction of $15,000 in 1971. Such $15,000 consists of the $13,500 contribution to the church in 1971 and $1,500 carried over from 1970 and treated as a charitable contribution paid to a section 170(b)(1)(A) organization in 1971. The $1,500 contribution treated as paid in 1971 is computed as follows:

1970 excess contributions	$2,000
50 percent of B's contribution base for 1971	15,000
Less:	
Contributions actually made in 1971 to section 170(b)(1)(A) organizations ($13,500)	
Contributions made to section $170(b)(1)(A) organizations in taxable years prior to 1970 treated as having been paid in 1971 (0)	13,500
Balance	1,500
Amount of 1970 excess treated as paid in 1971—the lesser of $2,000 (1970 excess contributions) or $1,500 (excess of 50 percent of contribution base for 1971 ($15,000) over the sum of the section 170(b)(1)(A) contributions actually made in 1971 ($13,500) and the section 170(b)(1)(A) contributions made in years prior to 1970 treated as having been paid in 1971 ($0))	1,500

If the excess contributions made by B in 1970 had been $1,000 instead of $2,000, then, for purposes of this example, the amount of the 1970 excess treated as paid in 1971 would be $1,000 rather than $1,500.

Example (2). Assume the same facts as in example (1), and, in addition, that B has a contribution base for 1972 of $10,000 and for 1973 of $20,000. Assume further with respect to 1972 that B elects under section 144 to take the standard deduction in computing taxable income and that his actual contributions to section 170(b)(1)(A) organizations in that year are $300 in cash. Assume further with respect to 1973 that B itemizes his deductions, which include a $5,000 cash contribution to a church. B's deductions for 1972 are not increased by reason of the $500 available as a charitable contributions carryover from 1970 (excess contributions made in 1970 ($2,000) less the amount of such excess treated as paid in 1971 ($1,500)), since B elected to take the standard deduction in 1972. However, for purposes of determining the amount of the excess charitable contributions made in 1970 which is available as a carryover to 1973, B is required to treat such $500 as a charitable contribution paid in 1972—the lesser of $500 or $4,700 (50 percent of contribution base ($5,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($300)). Therefore, even though the $5,000 contribution made by B in 1973 to a church does not amount to 50 percent of B's contribution base for 1973 (50 percent of $20,000), B may claim a charitable contributions deduction of only the $5,000 actually paid in 1973 since the entire excess charitable contribution made in 1970 ($2,000) has been treated as paid in 1971 ($1,500) and 1972 ($500).

Example (3). Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	197	1972	1973	1974
Contribution base	$10,000	$7,000	$15,000	$10,000	$9,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	6,000	4,400	8,000	3,000	1,500
Allowable charitable contributions deductions computed without regard to carryover of contributions	5,000	3,500	7,500	3,000	1,500
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years	1,000	900	500	0	0

Since C's contributions in 1973 and 1974 to section 170(b)(1)(A) organizations are less than 50 percent of his contribution base for such years, the excess contributions for 1970, 1971, and 1972 are treated as having been paid to section 170(b)(1)(A) organizations in 1973 and 1974 as follows:

1973

Contribution year	Total excess	Less: Amount treated as paid in year prior to 1973	Available charitable contributions carryovers
1970	$1,000	0	$1,000
1971	900	0	900
1972	500	0	500
Total			2,400

50 percent of B's contribution base for 1973	$5,000
Less: Charitable contributions made in 1973 to section 170(b)(1)(A) organizations	3,000
	2,000
Amount of excess contributions treated as paid in 1973—lesser of $2,400 (available carryovers to 1973) or $2,000 (excess of 50 percent of contribution base ($5,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($3,000))	2,000

1974

Contribution year	Total excess	Less: Amount treated as paid in year prior to 1974	Available charitable contributions carryovers
1970	$1,000	$1,000	0
1971	900	900	0
1972	500	100	$400
1973	0	0	0
Total			400

50 percent of B's contribution base for 1974	$4,500
Less: Charitable contributions made in 1974 to section 170(b)(1)(A) organizations	1,500
	3,000
Amount of excess contributions treated as paid in 1974—the lesser of $400 (available carryovers to 1974) or $3,000 (excess of 50 percent of contribution base ($4,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($1,500))	400

(c) *30-percent charitable contributions carryover of individuals*—(1) *Computation of excess of charitable contributions made in a contribution year.* Under section 170(b)(1)(D)(ii), subject to certain conditions and limitations, the excess of—

(i) The amount of the charitable contributions of 30-percent capital gain property, as defined in § 1.170A–8(d)(3), made by an individual in a taxable year (hereinafter in this paragraph referred to as the "contribution year") to section 170(b)(1)(A) organizations described in § 1.170A–9, over

(ii) 30 percent of his contribution base for such contribution year,

shall, subject to section 170(b)(1)(A) and paragraph (b) of § 1.170A–8, be treated as a charitable contribution of 30-percent capital gain property paid by him to a section 170(b)(1)(A) organization in each of the 5 taxable years immediately succeeding the contribution year in order of time. In addition, any charitable contribution of 30-percent capital gain property which is carried over to such years under section 170(d)(1) and paragraph (b) of this section shall also be treated as though it were a carryover of 30-percent capital gain property under section 170(b)(1)(D)(ii) and this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that H and W (husband and wife) have a contribution base for 1970 of $50,000 and for 1971 of $40,000 and file a joint return for each year. Assume further that in 1970 they contribute $20,000 cash and $13,000 of 30-percent capital gain property to a church, and that in 1971 they contribute $5,000 cash and $10,000 of 30-percent capital gain property to a church. They may claim a charitable contributions deduction of $25,000 in 1970 and the excess of $33,000 (contributed to the church) over $25,000 (50 percent of contribution base), or $8,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since 30 percent of their contribution base for 1971 ($12,000) exceeds the charitable contributions of 30-percent capital gain property ($10,000) made by them in 1971 to section 170(b)(1)(A) organizations (computed without regard to section 170(b)(1)(D)(ii) and (d)(1) and this section), the portion of the 1970 carryover equal to such excess of $2,000 ($12,000−$10,000) is treated, pursuant to the provisions of subparagraph (2) of this paragraph, as paid to a section 170(b)(1)(A) organization in 1971; the remaining $6,000 constitutes an unused charitable contributions carryover in respect of 30-percent capital gain property from 1970.

Example (2). Assume the same facts as in example (1) except the $33,000 of charitable contributions in 1970 are all 30-percent capital gain property. Since their charitable contributions in 1970 exceed 30 percent of their contribution base ($15,000) by $18,000 ($33,000−$15,000), they may claim a charitable contributions deduction of $15,000 in 1970, and the excess of $33,000 over $15,000, or $18,000, constitutes a charitable contributions carryover which shall be treated as a charitable contribution of 30-percent capital gain property paid by them to a section 170(b)(1)(A) organization in each of the 5 succeeding taxable years in order of time. Since they are allowed to treat only $2,000 of their 1970 contribution as paid in 1971, they have a remaining unused charitable contributions carryover of $16,000 in respect of 30-percent capital gain property from 1970.

(2) *Determination of amount treated as paid in taxable years succeeding contribution year.* In applying the provisions of subparagraph (1) of this paragraph, the amount of the excess computed in accordance with the provisions of such subparagraph and paragraph (d)(1) of this section which is to be treated as paid in any one of the 5 taxable years immediately succeeding the contribution year to a section 170(b)(1)(A) organization shall not exceed the least of the amounts computed under subdivisions (i) to (iv), inclusive of this subparagraph:

(i) The amount by which 30 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions of 30-percent capital gain property actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations, and

(*b*) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year, which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(ii) The amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of—

(*a*) The charitable contributions actually made (computed without regard to the provisions of section 170(b)(1)(D)(ii) and (d)(1) of this section) by the taxpayer in such succeeding taxable year to section 170(b)(1)(A) organizations,

(*b*) The charitable contributions of 30-percent capital gain property made to section 170(b)(1)(A) organizations in taxable years preceding the contribution year which, pursuant to the provisions of section 170(b)(1)(D)(ii) and (d)(1) and this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year, and

(*c*) The charitable contributions, other than contributions of 30-percent capital gain property, made to section 170(b)(1)(A) organizations which, pursuant to the provisions of section 170(d)(1) and paragraph (b) of this section, are treated as having been paid to a section 170(b)(1)(A) organization in such succeeding year.

(iii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contribution of 30-percent capital gain property in the contribution year, computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section.

(iv) In the case of the second, third, fourth, and fifth succeeding taxable years succeeding the contribution year, the portion of the excess charitable contribution of 30-percent capital gain property in the contribution year (computed under subparagraph (1) of this paragraph and paragraph (d)(1) of this section) which has not been treated as paid to a section 170(b)(1)(A) organization in a year intervening between the contribution year and such succeeding taxable year.

For purposes of applying subdivisions (i) and (ii) of this subparagraph, the amount of charitable contributions of 30-percent capital gain property actually made in a taxable year succeeding the contribution year shall be determined by first applying the 30-percent limitation of section 170(b)(1)(D)(i) and paragraph (d) of § 1.170A–8. If a taxpayer, in any one of the four taxable years succeeding a contribution year, elects under section 144 to take the standard deduction instead of itemizing the deductions allowable in computing taxable income, there shall be treated as paid (but not allowable as a deduction) in the standard deduction year the least of the amounts determined under subdivisions (i) to (iv), inclusive, of this subparagraph. The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the following factual situation for C who itemizes his deductions in computing taxable income for each of the years set forth in the example:

	1970	1971	1972	1973	1974
Contribution base	$10,000	$15,000	$20,000	$15,000	$33,000
Contributions of cash to section 170(b)(1)(A) organizations	2,000	8,500	0	14,000	700
Contributions of 30-percent capital gain property to section 170(b)(1)(A) organizations	5,000	0	7,800	0	6,400
Allowable charitable contributions deductions (computed without regard to carryover of contributions) subject to limitations of:					
50 percent	2,000	7,500	0	7,500	700
30 percent	3,000	0	6,000	0	6,400
Total	5,000	7,500	6,000	7,500	7,100
Excess of contributions for taxable year to be treated as paid in 5 succeeding taxable years:					
Carryover of contributions of property other than 30-percent capital gain property	0	1,000	0	6,500	
Carryover of contributions of 30-percent capital gain property	2,000	0	1,800	0	0

C's excess contributions for 1970, 1971, 1972, and 1973 which are treated as having been paid to section 170(b)(1)(A) organizations in 1972, 1973, and 1974 are indicated below. The portion of the excess charitable contribution for 1972 of 30-percent capital gain property which is not treated as paid in 1974 ($1,800–$900) is available as a carryover to 1975

1971

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1972	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
50 percent of C's contribution base for 1971				$7,500	
30 percent of C's contribution base for 1971					4,500
Less: Charitable contributions actually made in 1971 to section 170(b)(1)(A) organizations ($8,500, but not to exceed 50% of contribution base)				7,500	0
Excess				0	4,500
The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1971 is the least of—					
(i) Available carryover from 1970 to 1971 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1971 ($7,500) over sum of contributions actually made in 1971 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1971 ($4,500) over contributions of 30 percent capital gain property actually made in 1971 to section 170(b)(1)(A) organizations ($0)				4,500	
Amount treated as paid					0

1972

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1972	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	0	$1,000	0
				1,000	2,000
50 percent of C's contribution base for 1972				10,000	
30 percent of C's contribution base for 1972					6,000
Less: Charitable contributions actually made in 1972 to section 170(b)(1)(A) organizations ($7,800, but not to exceed 30% of contribution base)				0	6,000
Excess				10,000	0
(1) The amount of excess contributions for 1971 of property other than 30-percent capital gain property which is treated as paid in 1972 is the lesser of—					
(i) Available carryover from 1971 to 1972 of contributions of property other than 30-percent capital gain property				1,000	
(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000)				4,000	
Amount treated as paid					1,000
(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1972 is the least of—					
(i) Available carryover from 1970 to 1972 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1972 ($10,000) over sum of contributions actually made in 1972 to section 170(b)(1)(A) organizations ($6,000) and excess contributions for 1971 treated under item (1) above as paid in 1972 ($1,000)				3,000	
(iii) Excess of 30 percent of contribution base for 1972 ($6,000) over contributions of 30-percent capital gain property actually made in 1972 to section 170(b)(1)(A) organizations ($6,000)				0	
Amount treated as paid					0

1973

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1973	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	$1,000	0	0
1972	0	1,800	0	0	1,800
				0	3,800
50 percent of C's contribution base for 1973				$7,500	
30 percent of C's contribution base for 1973					4,500
Less: Charitable contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000, but not to exceed 50% of contribution base)				7,500	0
Excess				0	4,500
(1) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1973 is the least of—					
(i) Available carryover from 1970 to 1973 of contributions of 30-percent capital gain property				2,000	
(ii) Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1973 ($4,500) over contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0)				4,500	
Amount treated as paid					0
(2) The amount of excess contributions for 1972 of 30-percent capital gain property which is treated as paid in 1973 is the least of—					
(i) Available carryover from 1972 to 1973 of contributions of 30-percent capital gain property				1,800	
(ii) Excess of 50 percent of contribution base for 1973 ($7,500) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($7,500)				0	
(iii) Excess of 30 percent of contribution base for 1973 ($4,500) over sum of contributions of 30-percent capital gain property actually made in 1973 to section 170(b)(1)(A) organizations ($0) and excess contributions for 1970 treated under item (1) above as paid in 1973 ($0)				4,500	
Amount treated as paid					0

1974

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1974	Available charitable contributions carryovers	
	50%	30%		50%	30%
1970	0	$2,000	0	0	$2,000
1971	$1,000	0	$1,000	0	
1972	0	1,800	0	0	1,800
1973	6,500	0	0	$6,500	0
				6,500	3,800
50 percent of C's contribution base for 1974				16,500	
30 percent of C's contribution base for 1974					9,900
Less: Charitable contributions actually made in 1974 to section 170(b)(1)(A) organizations				700	6,400
Excess				15,800	3,500
(1) The amount of excess contributions for 1973 of property other than 30-percent capital gain property which is treated as paid in 1974 is the lesser of—					
(i) Available carryover from 1973 to 1974 of contributions of property other than 30-percent capital gain property				6,500	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100)				9,400	
Amount treated as paid					6,500

Contribution year	Total excess		Less: Amount treated as paid in years prior to 1974	Available charitable contributions carryovers	
	50%	30%		50%	30%
(2) The amount of excess contributions for 1970 of 30-percent capital gain property which is treated as paid in 1974 is the least of—					
(i) Available carryover from 1970 to 1974 of contributions of 30-percent capital gain property				$2,000	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations ($7,100) and excess contributions for 1973 of property other than 30-percent capital gain property treated under item (1) above as paid in 1974 ($6,500)				2,900	
(iii) Excess of 30 percent of contribution base for 1974 ($9,900) over contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400)				3,500	
Amount treated as paid					$2,000
(3) The amount of excess contributions for 1972 of 30-percent capital gain property whic is treated as paid in 1974 is the least of—					
(i) Available carryover from 1972 to 1974 of contributions of 30-percent capital gain property				1,800	
(ii) Excess of 50 percent of contribution base for 1974 ($16,500) over sum of contributions actually made in 1974 to section 170(b)(1)(A) organizations $7,100) and excess contributions for 1973 and 1970 treated under items (1) and (2) above as paid in 1974 ($8,500)				900	
(iii) Excess of 30 percent of contribution base for 1974 ($9,900) over sum of contributions of 30-percent capital gain property actually made in 1974 to section 170(b)(1)(A) organizations ($6,400) and excess contributions for 1970 of 30-percent capital gain property treated under item (2) above as paid in 1974 ($2,000)				1,500	
Amount treated as paid					900

(d) *Adjustments*—(1) *Effect of net operating loss carryovers on carryover of excess contributions.* An individual having a net operating loss carryover from a prior taxable year which is available as a deduction in a contribution year must apply the special rule of section 170(d)(1)(B) and this subparagraph in computing the excess described in paragraph (b)(1) or (c)(1) of this section for such contribution year. In determining the amount of excess charitable contributions that shall be treated as paid in each of the 5 taxable years succeeding the contribution year, the excess charitable contributions described in paragraph (b)(1) or (c)(1) of this section must be reduced by the amount by which such excess reduces taxable income (for purposes of determining the portion of a net operating loss which shall be carried to taxable years succeeding the contribution year under the second sentence of section 172(b)(2)) and increases the net operating loss which is carried to a succeeding taxable year. In reducing taxable income under the second sentence of section 172(b)(2), an individual who has made charitable contributions in the contribution year to both section 170(b)(1)(A) organizations, as defined in § 1.170A-9, and to organizations which are not section 170(b)(1)(A) organizations must first deduct contributions made to the section 170(b)(1)(A) organizations from his adjusted gross income computed without regard to his net operating loss deduction before any of the contributions made to organizations which are not section 170(b)(1)(A) organizations may be deducted from such adjusted gross income. Thus, if the excess of the contributions made in the contribution year to section 170(b)(1)(A) organizations over the amount deductible in such contribution year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding year or years, no part of the excess charitable contributions made in such contribution year shall be treated as paid in any of the 5 immediately succeeding taxable years. If only a portion of the excess charitable contributions is so used, the excess charitable contributions shall be reduced only to that extent. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). B, an individual, reports his income on the calendar year basis and for the year 1970 has adjusted gross income (computed without regard to any net operating loss deduction) of $50,000. During 1970 he made charitable contributions of cash in the amount of $30,000 all of which were to section 170(b)(1)(A) organizations. B has a net operating loss carryover from 1969 of $50,000. In the absence of the net operating loss deduction B would have been allowed a deduction for charitable contributions of $25,000. After the application of the net operating loss deduction, B is allowed no deduction for charitable contributions, and there is (before applying the special rule of section 170(d)(1)(B) and this subparagraph) a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 charitable contribution. After the $50,000 net operating loss carryover is applied against the $25,000 of taxable income for 1970 (computed in accordance with section 172(b)(2), assuming no deductions other than the charitable contributions deduction are applicable in making such computation), there remains a $25,000 net operating loss carryover to 1971. Since the application of the net operating loss carryover of $50,000 from 1969 reduces the 1970 adjusted gross income (for purposes of determining 1970 tax liability) to zero, no part of the $25,000 of charitable contributions in that year is deductible under section 170(b)(1). However, in determining the amount of the excess charitable contributions which shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975, the $30,000 must be reduced to $5,000 by the portion of the excess charitable contributions ($25,000) which was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover to 1971 from zero to $25,000.

Example (2). Assume the same facts as in example (1), except that B's total charitable contributions of $30,000 in cash made during 1970 consisted of $25,000 to section 170(b)(1)(A) organizations and $5,000 to organizations other than section 170(b)(1)(A) oragnizations. Under these facts there is a tentative excess charitable contribution of $25,000, rather than $30,000 as in example (1). For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2) by deducting the $25,000 of charitable contributions made to section 170(b)(1)(A) organizations. Since the excess charitable contribution of $25,000 determined in accordance with paragraph (b)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $25,000, no part of such excess charitable contributions made in the contribution year shall be treated as paid in any of the five immediately succeeding taxable years. No carryover is allowed with respect to the $5,000 of charitable contributions made in 1970 to organizations other than section 170(b)(1)(A) organizations.

Example (3). Assume the same facts as in example (1), except that B's total contributions of $30,000 made during 1970 were of 30-percent capital gain property. Under these facts there is a tentative excess charitable contribution of $30,000. For purposes of determining the net operating loss which remains to be carried over to 1971, B computes his taxable income for 1970 under section 172(b)(2)(B) by deducting the $15,000 (30% of $50,000) contribution of 30-percent capital gain property which would have been deductible in 1970 absent the net operating loss deduction. Since $15,000 of the excess charitable contribution of $30,000 determined in accordance with paragraph (c)(1) of this section was used to reduce taxable income for 1970 (as computed for purposes of the second sentence of section 172(b)(2)) and thereby served to increase the net operating loss carryover to 1971 from zero to $15,000, only $15,000 ($30,000—$15,000) of such excess shall be treated as paid in taxable years 1971, 1972, 1973, 1974, and 1975.

(2) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year computed as provided in paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. Thus, for example, assuming that in 1970 there is an excess contribution of $50,000 (determined as provided in paragraph (b)(1) of this section) which is to be carried to the 5 succeeding taxable years and that in 1973 the taxpayer has a net operating loss which may be carried back to 1970, the excess contribution of $50,000 for 1970 is not increased by reason of the fact that the adjusted gross income for 1970 (on which such excess contribution was based) is subsequently decreased by the carryback of the net operating loss from 1973. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribu-

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tion year, the amount of contributions made to section 170(b)(1)(A) organizations shall be limited to the amount of such contributions which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the contribution year. Thus, for example, assume that the taxpayer has a net operating loss in 1973 which is carried back to 1970 and in turn to 1971 and that he has made charitable contributions in 1970 to section 170(b)(1)(A) organizations. In determining the maximum amount of such charitable contributions which may be deducted in 1970 for purposes of determining the taxable income for 1970 which is deducted under section 172(b)(2) from the 1973 loss in order to ascertain the amount of such loss which is carried back to 1971, the 50-percent limitation of section 170(b)(1)(A) is based upon the adjusted gross income for 1970 computed without taking into account the net operating loss carryback from 1973 and without making any of the modifications specified in section 172(d).

(3) *Effect of net operating loss carryback to taxable years succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is treated as paid, as provided in paragraph (b)(2) or (c)(2) of this section, in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any taxable year subsequent to the deduction year which is a carryback or carryover to taxable years succeeding the deduction year, the amount of contributions made to section 170(b)(1)(A) organizations in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were treated as paid in such year, which did not exceed 50 percent or, in the case of 30-percent capital gain property, 30 percent of the donor's contribution base, computed without regard to any of the modifications referred to in section 172(d), for the deduction year.

(4) *Husband and wife filing joint returns*—(i) *Change from joint return to separate returns.* If a husband and wife—

(*a*) Make a joint return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(*b*) Make separate returns for one or more of the 5 taxable years immediately succeeding such contribution year,

any excess charitable contribution for the contribution year which is unused at the beginning of the first such taxable year for which separate returns are filed shall be allocated between the husband and wife. For purposes of the allocation, a computation shall be made of the amount of any excess charitable contribution which each spouse would have computed in accordance with paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph if separate returns (rather than a joint return) had been filed for the contribution year. The portion of the total unused excess charitable contribution for the contribution year allocated to each spouse shall be an amount which bears the same ratio to such unused excess charitable contribution as such spouse's excess contribution, based on the separate return computation, bears to the total excess contributions of both spouses, based on the separate return computation. To the extent that a portion of the amount allocated to either spouse in accordance with the foregoing provisions of this subdivision is not treated in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization in the taxable year in which a separate return or separate returns are filed, each spouse shall for purposes of paragraph (b)(2) or (c)(2) of this section treat his respective unused portion as the available charitable contributions carryover to the next succeeding taxable year in which the joint excess charitable contribution may be treated as paid in accordance with paragraph (b)(1) or (c)(1) of this section. If such husband and wife make a joint return in one of the 5 taxable years immediately succeeding the contribution year with respect to which a joint excess charitable contribution is computed and following such first taxable year for which such husband and wife filed a separate return, the amounts allocated to each spouse in accordance with this subdivision for such first year reduced by the portion of such amounts treated as paid to a section 170(b)(1)(A) organization in such first year and in any taxable year intervening between such first year and the succeeding taxable year in which the joint return is filed shall be aggregated for purposes of determining the amount of the available charitable contributions carryover to such succeeding taxable year. The provisions of this subdivision may be illustrated by the following example:

Example. (a) H and W file joint returns for 1970, 1971, and 1972, and in 1973 they file separate returns. In each such year H and W itemize their deductions in computing taxable income. Assume the following factual situation with respect to H and W for 1970:

1970

	H	W	Joint return
Contribution base	$50,000	$40,000	$90,000
Contributions of cash to section 170(b)(1)(A) organizations (no other contributions)	37,000	28,000	65,000
Allowable charitable contributions deductions	25,000	20,000	45,000
Excess contributions for taxable year to be treated as paid in 5 succeeding taxable years	12,000	8,000	20,000

(b) The joint excess charitable contribution of $20,000 is to be treated as having been paid to a section 170(b)(1)(A) organization in the 5 succeeding taxable years. Assume that in 1971 the portion of such excess treated as paid by H and W is $3,000, and that in 1972 the portion of such excess treated as paid is $7,000. Thus, the unused portion of the excess charitable contribution made in the contribution year is $10,000 ($20,000 less $3,000 [amount treated as paid in 1971] and $7,000 [amount treated as paid in 1972]). Since H and W file separate returns in 1973, $6,000 of such $10,000 is allocable to H, and $4,000 is allocable to W. Such allocation is computed as follows:

$$\frac{\$12{,}000 \text{ (excess charitable contributions made by H (based on separate return computation) in 1970)}}{\$20{,}000 \text{ (total excess charitable contributions made by H and W (based on separate return computation) in 1970)}} \times \$10{,}000 = \$6{,}000$$

$$\frac{\$8{,}000 \text{ (excess charitable contributions made by W (based on separate return computation) in 1970)}}{\$20{,}000 \text{ (total excess charitable contributions made by H and W (based on separate return computation) in 1970)}} \times \$10{,}000 = \$4{,}000$$

(c) In 1973 H has a contribution base of $70,000, and he contributes $14,000 in cash to a section 170(b)(1)(A) organizaton. In 1973 W has a contribution base of $50,000, and she contributes $10,000 in cash to a section 170(b)(1)(A) organization. Accordingly, H may claim a charitable contributions deduction of $20,000 in 1973, and W may claim a charitable contributions deduction of $14,000 in 1973. H's $20,000 deduction consists of the $14,000 contribution made to the section 170(b)(1)(A) organization in 1973 and the $6,000 carried over from 1970 and treated as a charitable contribution paid by him to a section 170(b)(1)(A) organization in 1973. W's $14,000 deduction consists

of the $10,000 contribution made to a section 170(b)(1)(A) organization in 1973 and the $4,000 carried over from 1970 and treated as a charitable contribution paid by her to a section 170(b)(1)(A) organization in 1973.

(d) The $6,000 contribution treated as paid in 1973 by H, and the $4,000 contribution treated as paid in 1973, by W, are computed as follows:

	H	W
Available charitable contribution carryover (see computations in (b))	$6,000	$4,000
50 percent of contribution base	35,000	25,000
Contributions of cash made in 1973 to section 170(b)(1)(A) organizations (no other contributions)	14,000	10,000
	21,000	15,000
Amount of excess contributions treated as paid in 1973:		
The lesser of $6,000 (available carryover of H to 1973) or $21,000 (excess of 50 percent of contribution base ($35,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($14,000))	$6,000	
The lesser of $4,000 (available carryover of W to 1973) or $15,000 (excess of 50 percent of contribution base ($25,000) over contributions actually made in 1973 to section 170(b)(1)(A) organizations ($10,000))		$4,000

(e) It is assumed that H and W made no contributions of 30-percent capital gain property during these years. If they had made such contributions, there would have been similar adjustments based on 30 percent of the contribution base.

(ii) *Change from separate returns to joint return.* If in the case of a husband and wife—

(*a*) Either or both of the spouses make a separate return for a contribution year and compute an excess charitable contribution for such year in accordance with the provisions of paragraph (b)(1) or (c)(1) of this section and subparagraph (1) of this paragraph, and

(*b*) Such husband and wife make a joint return for one or more of the taxable years succeeding such contribution year,

the excess charitable contribution of the husband and wife for the contribution year which is unused at the beginning of the first taxable year for which a joint return is filed shall be aggregated for purposes of determining the portion of such unused charitable contribution which shall be treated in accordance with paragraph (b)(2) or (c)(2) of this section as a charitable contribution paid to a section 170(b)(1)(A) organization. The provisions of this subdivision also apply in the case of two single individuals who are subsequently married and file a joint return. A remarried taxpayer who filed a joint return with a former spouse in a contribution year with respect to which an excess charitable contribution was computed and who in any one of the 5 taxable years succeeding such contribution year files a joint return with his or her present spouse shall treat the unused portion of such excess charitable contribution allocated to him or her in accordance with subdivision (i) of this subparagraph in the same manner as the unused portion of an excess charitable contribution computed in a contribution year in which he filed a separate return, for purposes of determining the amount which in accordance with paragraph (b)(2) or (c)(2) of this section shall be treated as paid to an organization specified in section 170(b)(1)(A) in such succeeding year.

(iii) *Unused excess charitable contribution of deceased spouse.* In case of the death of one spouse, any unused portion of an excess charitable contribution which is allocable in accordance with subdivision (i) of this subparagraph to such spouse shall not be treated as paid in the taxable year in which such death occurs or in any subsequent taxable year except on a separate return made for the deceased spouse by a fiduciary for the taxable year which ends with the date of death or on a joint return for the taxable year in which such death occurs. The application of this subdivision may be illustrated by the following example:

Example. Assume the same facts as in the example in subdivision (i) of this subparagraph except that H dies in 1972 and W files a separate return for 1973. W made a joint return for herself and H for 1972. In that example, the unused excess charitable contribution as of January 1, 1973, was $10,000, $6,000 of which was allocable to H and $4,000 to W. No portion of the $6,000 allocable to H may be treated as paid by W or any other person in 1973 or any subsequent year.

(e) *Information required in support of a deduction of an amount carried over and treated as paid.* If, in a taxable year, a deduction is claimed in respect of an excess charitable contribution which, in accordance with the provisions of paragraph (b)(2) or (c)(2) of this section, is treated (in whole or in part) as paid in such taxable year, the taxpayer shall attach to his return a statement showing:

(1) The contribution year (or years) in which the excess charitable contributions were made,

(2) The excess charitable contributions made in each contribution year, and the amount of such excess charitable contributions consisting of 30-percent capital gain property,

(3) The portion of such excess, or of each such excess, treated as paid in accordance with paragraph (b)(2) or (c)(2) of this section in any taxable year intervening between the contribution year and the taxable year for which the return is made, and the portion of such excess which consists of 30-percent capital gain property,

(4) Whether or not an election under section 170(b)(1)(D)(iii) has been made which affects any of such excess contributions of 30-percent capital gain property, and

(5) Such other information as the return or the instructions relating thereto may require.

(f) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(1) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

§ 1.170A–11 Limitation on, and carryover of, contributions by corporations.

(a) *In general.* The deduction by a corporation in any taxable year for charitable contributions, as defined in section 170(c), is limited to 5 percent of its taxable income for the year, computed without regard to—

(1) The deduction under section 170 for charitable contributions,

(2) The special deductions for corporations allowed under part VIII (except section 248), subchapter B, chapter 1 of the Code,

(3) Any net operating loss carryback to the taxable year under section 172,

(4) The special deduction for Western Hemisphere trade corporations under section 922, and

(5) Any capital loss carryback to the taxable year under section 1212(a)(1).

A charitable contribution by a corporation to a trust, chest, fund, or foundation described in section 170(c)(2) is deductible under section 170 only if the contribution is to be used in the United States or its possessions exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals. For the purposes of section 170, amounts excluded from the gross income of a corporation under section 114, relating to sports programs conducted for the American National Red Cross, are not to be considered contributions or gifts.

(b) *Election by corporations on an accrual method.* (1) A corporation reporting its taxable income on an accrual method may elect to have a charitable contribution treated as paid during the taxable year, if payment is actually made on or before the 15th day of the third month following the close of such year and if, during such year, its board of directors authorizes the charitable contribution. If by reason of such an election a charitable contribution (other than a contribution of a letter, memorandum, or property similar to a letter or memorandum) paid in a taxable year beginning after December 31, 1969, is treated as paid during a taxable year beginning before January 1, 1970, the provisions of § 1.170A–4 shall not be applied to reduce the amount of such contribution. However, see section 170(e) before its amendment by the Tax Reform Act of 1969.

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration that the resolution authorizing the contribution was adopted by the board of directors during the taxable year, and the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under the penalties of perjury. There shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution.

(c) *Charitable contributions carryover of corporations*—(1) *In general.* Subject to the reduction provided in subparagraph (2) of this paragraph, any charitable contributions made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible in such contribution year under the 5-percent limitation of section 170(b)(2) are deductible in each of the five succeeding taxable years in order of time, but only to the extent of the lesser of the following amounts:

(i) The excess of the maximum amount deductible for such succeeding taxable year under the 5-percent limitation of section 170(b)(2) over the sum of the charitable contributions made in that year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this paragraph in such succeeding taxable year; or

(ii) In the case of the first taxable year succeeding the contribution year, the amount of the excess charitable contributions, and in the case of the second, third, fourth, and fifth taxable years succeeding the contribution year, the portion of the excess charitable contributions not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

This paragraph applies to excess charitable contributions by a corporation, whether or not such contributions are made to, or for the use of, the donee organization and whether or not such organization is a section 170(b)(1)(A) organization, as defined in § 1.170A–9. For purposes of applying this paragraph, a charitable contribution made in a taxable year beginning before January 1, 1970, which is carried over to taxable year beginning after December 31, 1969, under section 170(b)(2) (before its amendment by the Tax Reform Act of 1969) and is deductible in such taxable year beginning after December 31, 1969, shall be treated as deductible under section 170(d)(1) and this paragraph. The application of this subparagraph may be illustrated by the following example:

Example. A corporation which reports its income on the calendar year basis makes a charitable contribution of $20,000 in 1970. Its taxable income (determined without regard to any deduction for charitable contributions) for 1970 is $100,000. Accordingly, the charitable contributions deduction for that year is limited to $5,000 (5 percent of $100,000). The excess charitable contribution not deductible in 1970 ($15,000) is a carryover to 1971. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $150,000 in 1971 and makes a charitable contribution of $5,000 in that year. For 1971 the corporation may deduct as a charitable contribution the amount of $7,500 (5 percent of $150,000). This amount consists of the $5,000 contribution made in 1971 and of the $2,500 carried over from 1970. The remaining $12,500 carried over from 1970 and not allowable as a deduction for 1971 because of the 5-percent limitation may be carried over to 1972. The corporation has taxable income (determined without regard to any deduction for charitable contributions) of $200,000 in 1972 and makes a charitable contribution of $5,000 in that year. For 1972 the corporation may deduct the amount of $10,000 (5 percent of $200,000). This amount consists of the $5,000 contributed in 1972, and $5,000 of the $12,500 carried over from 1970 to 1972. The remaining $7,500 of the carryover from 1970 is available for purposes of computing the charitable contributions carryover from 1970 to 1973, 1974, and 1975.

(2) *Effect of net operating loss carryovers on carryover of excess contributions.* A corporation having a net operating loss carryover from any taxable year must apply the special rule of section 170(d)(2)(B) and this subparagraph before computing under subparagraph (1) of this paragraph the excess charitable contributions carryover from any taxable year. In determining the amount of excess charitable contributions that may be deducted in accordance with subparagraph (1) of this paragraph in taxable years succeeding the contribution year, the excess of the charitable contributions made by a corporation in the contributions year over the amount deductible in such year must be reduced by the amount by which such excess reduces taxable income for purposes of determining the net operating loss carryover under the second sentence of section 172(b)(2) and increases a net operating loss carryover to a succeeding taxable year. Thus, if the excess of the contributions made in a taxable year over the amount deductible in the taxable year is utilized to reduce taxable income (under the provisions of section 172(b)(2)) for such year, thereby serving to increase the amount of the net operating loss carryover to a succeeding taxable year or years, no charitable contributions carryover will be allowed. If only a portion of the excess charitable contributions is so used, the charitable contributions carryover will be reduced only to that extent. The application of this subparagraph may be illustrated by the following example:

Example. A corporation, which reports its income on the calendar year basis, makes a charitable contribution of $10,000 during 1971. Its taxable income for 1971 is $80,000 (computed without regard to any net operating loss deduction and computed in accordance with section 170(b)(2) without regard to any deduction for charitable contributions). The corporation has a net operating loss carryover from 1970 of $80,000. In the absence of the net operating loss deduction the corporation would have been allowed a deduction for charitable contributions of $4,000 (5 percent of $80,000). After the application of the net operating loss deduction the corporation is allowed no deduction for charitable contributions, and there is a tentative charitable contribution carryover from 1971 of $10,000. For purposes of determining the net operating loss carryover to 1972 the corporation computes its taxable income for 1971 under section 172(b)(2) by deducting the $4,000 charitable contribution. Thus, after the $80,000 net operating loss carryover is applied against the $76,000 of taxable income for 1971 (computed in accordance with section 172(b)(2)), there remains a $4,000 net operating loss carryover to 1972. Since the application of the net operating loss carryover of $80,000 from 1970 reduces the taxable income for 1971 to zero, no part of the $10,000 of charitable contributions in that year is deductible under section 170(b)(2). However, in determining the amount of the allowable charitable contributions carryover from 1971 to 1972, 1973, 1974, 1975, and 1976, the $10,000 must be reduced by the portion thereof ($4,000) which was used to reduce taxable income for 1971 (as computed for purposes of the second sentence of section 172(b)(2)) and which thereby served to increase the net operating loss carryover from 1970 to 1972 from zero to $4,000.

(3) *Effect of net operating loss carryback to contribution year.* The amount of the excess contribution for a contribution year computed as provided in subparagraph (1) of this paragraph shall not be increased because a net operating loss carryback is available as a deduction in the contribution year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any year subsequent to the contribution year which is a carryback or carryover to taxable years succeeding the contribution year, the amount of any charitable contributions shall be limited to the amount of such contributions which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without regard to any of the modifications referred to in section 172(d), for the contribution year. For illustrations see paragraph (d)(2) of § 1.170A–10.

(4) *Effect of net operating loss carryback to taxable year succeeding the contribution year.* The amount of the charitable contribution from a preceding taxable year which is deductible (as provided in this paragraph) in a current taxable year (hereinafter referred to in this subparagraph as the "deduction year") shall not be reduced because a net operating loss carryback is available as a deduction in the deduction year. In addition, in determining under the provisions of section 172(b)(2) the amount of the net operating loss for any taxable year subsequent to the deduction year which is a carryback or a carryover to taxable years succeeding the deduction year, the amount of contributions made in the deduction year shall be limited to the amount of such contributions, which were actually made in such year and those which were deductible in such year under section 170(d)(2), which did not exceed 5 percent of the donor's taxable income, computed as provided in paragraph (a) of this section and without

regard to any of the modifications referred to in section 172(d), for the deduction year.

(5) *Year contribution is made.* For purposes of this paragraph, contributions made by a corporation in a contribution year include contributions which, in accordance with the provisions of section 170(a)(2) and paragraph (b) of this section, are considered as paid during such contribution year.

(d) *Effective date.* This section applies only to contributions paid in taxable years beginning after December 31, 1969. For purposes of applying section 170(d)(2) with respect to contributions paid, or treated under section 170(a)(2) as paid, in a taxable year beginning before January 1, 1970, subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 shall not apply. See section 201(g)(1)(D) of the Tax Reform Act of 1969 (83 Stat. 564).

PAR. 7. Section 1.262–1 is amended by revising paragraph (b)(5) to read as follows:

§ 1.262–1 Personal, living, and family expenses.

* * * * *

(b) *Examples of personal, living, and family expenses.* * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162, § 1.162–2, and paragraph (d) of § 1.162–5 (relating to trade or business expenses), section 170 and paragraph (a)(2) of § 1.170–2 or paragraph (g) of § 1.170A–1 (relating to charitable contributions), section 212 and § 1.212–1 (relating to expenses for production of income), section 213(e) and paragraph (e) of § 1.213–1 (relating to medical expenses) or section 217(a) and paragraph (a) of § 1.217–1 (relating to moving expenses). The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. The costs of the taxpayer's lodging not incurred in traveling away from home are personal expenses and are not deductible unless they qualify as deductible expenses under section 217. Except as permitted under section 162, 212, or 217, the costs of the taxpayer's meals not incurred in traveling away from home are personal expenses.

* * * * *

PAR. 8. Section 1.381(c)(19)–1 is amended by revising that part of subsection (a) which follows subparagraph (2) thereof, subparagraphs (3)(i) and (4) of paragraph (c), and paragraph (d)(1) to read as follows:

§ 1.381(c)(19)–1 Charitable contributions carryovers in certain acquisitions.

(a) *Carryover requirement.* * * *

To determine the amount of excess contributions made by a distributor or transferor corporation and to integrate them with contributions made by the acquiring corporation for the purpose of determining the charitable contributions deductible by the acquiring corporation for its taxable years beginning immediately after the date of distribution or transfer, it is necessary to apply the provisions of section 170(b)(2) and § 1.170–3 (or, if applicable, section 170(b)(2) and (d)(2) and § 1.170A–11) in accordance with the conditions and limitations of section 381(c)(19) and this section. For taxable years beginning before January 1, 1970, see § 1.170 for provisions of section 170(b)(2) as referred to in this section. For taxable years beginning after December 31, 1969, see § 1.170A for provisions of section 170(b)(2) or (d)(2) as referred to in this section. For special rules for applying section 170(d)(2) with respect to contributions paid, or treated as paid, in taxable years beginning before January 1, 1970, see paragraph (d) of § 1.170A–11.

* * * * *

(c) *Taxable years to which carryovers apply and amount deductible.* * * *

(3) *Taxable years beginning after December 31, 1962.* (i) If the taxable year of the distributor or transferor corporation ending on the date of distribution or transfer begins after December 31, 1962, the excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and in each of its four immediately preceding taxable years (excluding any taxable year beginning before January 1, 1962), to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on the date of distribution or transfer or its prior taxable years, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) (or, if applicable, section 170(d)(2)) and subdivision (ii) of this subparagraph, in its taxable years which begin after the date of distribution or transfer. However, any portion of the excess charitable contributions made by a distributor or transferor corporation in a particular taxable year, to which this subparagraph is applicable, which is not deductible under this section within the 5 taxable years immediately following the taxable year in which the contribution was paid by the distributor or transferor corporation shall not be deductible by the acquiring corporation in any other taxable year.

* * * * *

(4) *General rules.* No excess charitable contributions made by a distributor or transferor corporation shall be deductible by the acquiring corporation in its taxable year which includes the date of distribution or transfer. In addition, an excess charitable contribution made by a distributor or transferor corporation in a taxable year prior to the taxable year of the transfer is only deductible by the distributor or transferor corporation, subject to the limitations of section 170(b)(2) (or, if applicable, section 170(d)(2)), in its subsequent taxable years which begin on or before the date of distribution or transfer, and by the acquiring corporation in its taxable year or years beginning after the date of distribution or transfer.

(d) *Rules governing amounts deductible by acquiring corporations.* (1) In applying the provisions of section 170(b)(2) (or, if applicable, section 170(d)(2)) for the purpose of determining the amount of excess charitable contributions which are deductible by the acquiring corporation in its taxable years beginning after the date of distribution or transfer, all taxable years of the distributor or transferor and acquiring corporations which, with respect to a particular taxable year beginning after the date of distribution or transfer, constitute the same numbered preceding taxable year shall together be considered as 1 taxable year even though the taxable years involved may not end on the same date. Thus, for example, all taxable years of the distributor or transferor and acquiring corporations which, with respect to the first taxable year of the acquiring corporation beginning after the date of distribution or transfer, constitutes the second preceding taxable year shall together be considered as 1 taxable year even though the taxable years involved may not end on the same date. Any excess charitable contributions carried over from preceding taxable years which are considered as 1 taxable year shall be taken into account by the acquiring corporation as one amount, without regard to the extent to which the contributions were made by a distributor or transferor corporation or the acquiring corporation.

* * * * *

PAR. 9. Section 1.545 is amended by revising subsections (a) and (b)(2) and (9) of section 545, by adding a new subsection (d) to section 545, and by revising the historical note, as follows:

§ 1.545 Statutory provisions; undistributed personal holding company income.

SEC. 545. *Undistributed personal holding company income*—(a) *Definition.* For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by U.S. persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by U.S. persons on any one day during such period.

* * * * *

(b) *Adjustments to taxable income.* * * *

(2) *Charitable contributions.* The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when

used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170 (b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (8) of this subsection.

* * * * *

(9) *Amount of a lien in favor of the United States.* There shall be allowed as a deduction the amount, not to exceed the taxable income of the taxpayer, of any lien in favor of the United States (notice of which has been filed as provided in section 6323(f)) to which the taxpayer is subject at the close of the taxable year. The sum of the amounts deducted under this paragraph with respect to any lien shall, for the purposes of this section, be added to the taxable income of the taxpayer for the taxable year in which such lien is satisfied or released. Where an amount is added to the taxable income of a corporation by reason of the preceding sentence of this paragraph, the shareholders of the corporation may, pursuant to regulations prescribed by the Secretary or his delegate, elect to compute the income tax with respect to such dividends as are attributable to such amount as though they were received ratably over the period the lien was in effect.

* * * * *

(d) *Certain foreign corporations.* In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

[Sec. 545 as amended by sec. 32, Technical Amendments Act 1958 (72 Stat. 1631); sec. 3(d), Act of Feb. 2, 1962 (Public Law 87-403, 76 Stat. 7); sec. 9(d)(2), Rev. Act 1962 (76 Stat. 1001); secs. 207(b)(5), 209(c)(2), and 225(i)(1) and (2), Rev. Act 1964 (78 Stat. 42, 46, 90); sec. 101(b)(2), Federal Tax Lien Act 1966 (80 Stat. 1132); sec. 104(h)(3), Foreign Investors Tax Act 1966 (80 Stat. 1560); sec. 201(a)(2)(B), Tax Reform Act 1969 (83 Stat. 558)]

PAR. 10. Section 1.545-2 is amended by revising paragraph (b) to read as follows:

§ 1.545-2 Adjustments to taxable income.

* * * * *

(b) *Charitable contributions* — (1) *Taxable years beginning before January 1, 1970* (i) Section 545(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining undistributed personal holding company income of a corporation for taxable years beginning before January 1, 1970, the limitations in section 170(b)(1)(A) and (B), relating to charitable contributions by individuals, shall apply and section 170(b)(2) and (5), relating to charitable contributions by corporations and carryover of certain excess charitable contributions made by individuals, respectively, shall not apply.

(ii) Although the limitations of section 170(b)(1)(A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section 545(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applied. Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 545(b)(8), relating to expenses and depreciation applicable to property of the taxpayer. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2) and, with respect to contributions paid in taxable years beginning after December 31, 1963, in section 170(b)(5), shall not be allowed as a deduction in computing undistributed personal holding company income for any taxable year.

(iii) See § 1.170-2 with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

(2) *Taxable years beginning after December 31, 1969.* (i) Section 545(b)(2) provides that, in computing the deduction allowable for charitable contributions for purposes of determining undistributed personal holding company income of a corporation for taxable years beginning after December 31, 1969, the limitations in section 170(b)(1)(A), (B), and (D)(i) (relating to charitable contributions by individuals) shall apply, and section 170(b)(1)(D)(ii) (relating to excess charitable contributions by individuals of certain capital gain property, section 170(b)(2) (relating to the 5-percent limitation on charitable contributions by corporations), and section 170(d) (relating to carryovers of excess contributions of individuals and corporations) shall not apply.

(ii) Although the limitations of section 170(b)(1)(A), (B), and (D)(i) are 50, 20, and 30 percent, respectively, of an individual's contribution base, these limitations are applied for purposes of section 545(b)(2) by using 50, 20, and 30 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applies. Thus, the term "contribution base" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 545(b)(8), relating to expenses and depreciation applicable to property of the taxpayer. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(1)(D)(ii) and (d), shall not be allowed as a deduction in computing undistributed personal holding company income for any taxable year.

(iii) See § 1.170A-8 for the rules with respect to the charitable contributions to which the 50-, 20-, and 30-percent limitations apply.

* * * * *

PAR. 11. Section 1.556 is amended by revising paragraph (b)(2) of section 556 and the historical note to read as follows:

§ 1.556 Statutory provisions; undistributed foreign personal holding company income.

SEC. 556. *Undistributed foreign personal holding company income.*

* * * * *

(b) *Adjustments to taxable income.* * * *

(2) *Charitable contributions.* The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 5-percent limitation) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

* * * * *

[Sec. 556 as amended by sec. 33, Technical Amendments Act 1958 (72 Stat. 1632); secs. 207(b)(6) and 209(c)(2), Rev. Act 1964 (78 Stat. 42, 46); sec. 201(a)(2)(B), Tax Reform Act 1969 (83 Stat. 558)]

PAR. 12. Section 1.556-2 is amended by revising paragraph (b) to read as follows:

§ 1.556-2 Adjustments to taxable income.

* * * * *

(b) *Charitable contributions*—(1) *Taxable years beginning before January 1, 1970.* (i) Section 556(b)(2) provides that, in computing the deduction for charitable contributions for purposes of determining the undistributed foreign personal holding company income of a corporation for taxable years beginning before January 1, 1970, the limitations in section 170(b)(1)(A) and (B), relating to charitable contributions by individuals, shall apply and section 170(b)(2) and (5), relating to charitable contributions by corporations and carryover of certain excess charitable contributions made by individuals, respectively, shall not apply.

(ii) Although the limitations of section 170(b)(1)(A) and (B) are 10 and 20 percent, respectively, of the individual's adjusted gross income, the limitations are applied for purposes of section

556(b)(2) by using 10 and 20 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applied. Thus, the term "adjusted gross income" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in the first sentence of section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 556(b)(5), relating to expenses and depreciation applicable to property of the taxpayer, and section 556(b)(6), relating to taxes and contributions to pension trusts, and without the inclusion of the amounts includible as dividends under section 555(b), relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(2) and, with respect to contributions paid in taxable years beginning after December 31, 1963, in section 170(b)(5), shall not be allowed as a deduction in computing undistributed foreign personal holding company income for any taxable year.

(iii) See § 1.170–2 with respect to the charitable contributions to which the 10-percent limitation is applicable and the charitable contributions to which the 20-percent limitation is applicable.

(2) *Taxable years beginning after December 31, 1969.* (i) Section 556(b)(2) provides that, in computing the deduction allowable for charitable contributions for purposes of determining the undistributed foreign personal holding company income of a corporation for taxable years beginning after December 31, 1969, the limitations in section 170(b)(1)(A), (B), and (D)(i) (relating to charitable contributions by individuals) shall apply, and section 170(b)(1)(D)(ii) (relating to excess charitable contributions by individuals of certain capital gain property), section 170(b)(2) (relating to the 5-percent limitation on charitable contributions by corporations), and section 170(d) (relating to carryovers of excess contributions of individuals and corporations) shall not apply.

(ii) Although the limitations of section 170(b)(1)(A), (B), and (D)(i) are 50, 20, and 30 percent, respectively, of an individual's contribution base, these limitations are applied for purposes of section 556(b)(2) by using 50, 20, and 30 percent, respectively, of the corporation's taxable income as adjusted for purposes of section 170(b)(2), that is, the same amount of taxable income to which the 5-percent limitation applies. Thus, the term "contribution base" when used in section 170(b)(1) means the corporation's taxable income computed with the adjustments, other than the 5-percent limitation, provided in section 170(b)(2). However, a further adjustment for this purpose is that the taxable income shall also be computed without the deduction of the amount disallowed under section 556(b)(5), relating to expenses and depreciation applicable to property of the taxpayer, and section 556(b)(6), relating to taxes and contributions to pension trusts, and without the inclusion of the amounts includible as dividends under section 555(b), relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder. The carryover of charitable contributions made in a prior year, otherwise allowable as a deduction in computing taxable income to the extent provided in section 170(b)(1)(D)(ii) and (d), shall not be allowed as a deduction in computing undistributed foreign personal holding company income for any taxable year.

(iii) See § 1.170A–8 for the rules with respect to the charitable contributions to which the 50-, 20-, and 30-percent limitations apply.

* * * * *

PAR. 13. Section 1.809 is amended by revising subsections (d)(11), (e)(3) and (5), and (g)(3) of section 809 and the historical note to read as follows:

§ 1.809 Statutory provisions; life insurance companies; in general.

SEC. 809. *In general.* * * *

(d) *Deductions.* * * *

(11) *Certain mutualization distributions.* The amount of distributions to shareholders made in 1958, 1959, 1960, 1961, and 1962 in acquisition of stock pursuant to a plan of mutualization adopted before January 1, 1958.

* * * * *

(e) *Modifications.* * * *

(3) *Charitable, etc., contributions and gifts.* In applying section 170—

(A) The limit on the total deductions under such section provided by section 170(b)(2) shall be 5 percent of the gain from operations computed without regard to—

(i) The deduction provided by section 170,

(ii) The deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) Any operations loss carryback to the taxable year under section 812; and

(B) Under regulations prescribed by the Secretary or his delegate, a rule similar to the rule contained in section 170(d)(2)(B) shall be applied.

* * * * *

(5) *Net operating loss deduction.* Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

* * * * *

(g) *Limitations on deduction for certain mutualization distributions.* * * *

(3) *Application of section 815.* That portion of any distribution with respect to which a deduction is allowed under subsection (d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distribution made in 1959, 1960, 1961, or 1962, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B).

[Sec. 809 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 121); amended by sec. 2, Act of June 27, 1961 (Public Law 87–59, 75 Stat. 120, 121); sec. 3, Act of October 10, 1962 (Public Law 87–790, 76 Stat. 808); sec. 3, Act of October 23, 1962 (Public Law 87–858, 76 Stat. 1134); secs. 214(b)(4) and 228(a), Rev. Act 1964 (78 Stat. 55, 98); secs. 201(a)(2)(C) and 907(c)(2)(B), Tax Reform Act 1969 (83 Stat. 558, 717)]

PAR. 14. Section 1.809–6 is amended by revising that part of paragraph (c)(2) which precedes subdivision (i) thereof to read as follows:

§ 1.809–6 Modifications.

* * * * *

(c) *Charitable, etc., contributions and gifts.* * * *

(2) In applying the first sentence of section 170(b)(2) as contained in § 1.170 or, in the case of taxable years beginning after December 31, 1969, section 170(d)(2)(B) as contained in § 1.170A, any excess of the charitable contributions made by a life insurance company in a taxable year over the amount deductible in such year under the limitation contained in subparagraph (1) of this paragraph, shall be reduced to the extent that such excess:

* * * * *

PAR. 15. Section 1.1001–1 is amended by revising paragraph (e)(1) to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(e) *Transfers in part a sale and in part a gift.* (1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For the determination of basis of property in the hands of the transferee, see § 1.1015–4. For the allocation of the adjusted basis of property in the case of a bargain sale to a charitable organization, see § 1.1011–2.

* * * * *

PAR. 16. Section 1.1011 is amended by revising section 1011 and by adding a historical note to read as follows:

§ 1.1011 Statutory provisions; adjusted basis for determining gain or loss.

SEC. 1011. *Adjusted basis for determining gain or loss*—(a) *General rule.* The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) *Bargain sale to a charitable organization.* If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis

as the amount realized bears to the fair market value of the property.

[Sec. 1011 as amended by sec. 201(f), Tax Reform Act 1969 (83 Stat. 564)]

PAR. 17. Immediately after § 1.1011–1 the following new section is added.

§ 1.1011–2 Bargain sale to a charitable organization.

(a) *In general.* (1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1001–1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of the property must be reduced under section 170(e)(1) is the amount determined by taking into account the amount of gain which would have been ordinary income or long-term capital gain if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange.

(2) If in the taxable year there is a sale or exchange of property which gives rise to a charitable contribution which is carried over under section 170(b)(1)(D)(ii) or section 170(d) to a subsequent taxable year or is postponed under section 170(a)(3) to a subsequent taxable year, section 1011(b) and paragraph (b) of this section must be applied for purposes of apportioning the adjusted basis of the property for the year of the sale or exchange, whether or not such contribution is allowable as a deduction under section 170 in such subsequent year.

(3) If property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an amount realized for purposes of determining whether there is a sale or exchange to which section 1011(b) and this section apply, even though the transferee does not agree to assume or pay the indebtedness.

(4)(i) Section 1011(b) and this section apply where property is sold or exchanged in return for an obligation to pay an annuity and a charitable contributions deduction is allowable under section 170 by reason of such sale or exchange.

(ii) If in such case the annuity received in exchange for the property is nonassignable, or is assignable but only to the charitable organization to which the property is sold or exchanged, and if the transferor is the only annuitant or the transferor and a designated survivor annuitant or annuitants are the only annuitants, any gain on such exchange is to be reported as provided in example (8) in paragraph (c) of this section. In determining the period over which gain may be reported as provided in such example, the life expectancy of the survivor annuitant may not be taken into account. The fact that the transferor may retain the right to revoke the survivor's annuity or relinquish his own right to the annuity will not be considered, for purposes of this subdivision, to make the annuity assignable to someone other than the charitable organization. Gain on an exchange of the type described in this subdivision pursuant to an agreement which is entered into after December 19, 1969, and before May 3, 1971, may be reported as provided in example (8) in paragraph (c) of this section, even though the annuity is assignable.

(iii) In the case of an annuity to which subdivision (ii) of this subparagraph applies, the gain unreported by the transferor with respect to annuity payments not yet due when the following events occur is not required to be included in gross income of any person where—

(*a*) The transferor dies before the entire amount of gain has been reported and there is no surviving annuitant, or

(*b*) The transferor relinquishes the annuity to the charitable organization.

If the transferor dies before the entire amount of gain on a two-life annuity has been reported, the unreported gain is required to be reported by the surviving annuitant or annuitants with respect to the annuity payments received by them.

(b) *Apportionment of adjusted basis.* For purposes of determining gain on a sale or exchange to which this paragraph applies, the adjusted basis of the property which is sold or exchanged shall be that portion of the adjusted basis of the entire property which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the entire property. The amount of such gain which shall be treated as ordinary income (or long-term capital gain) shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange as the amount realized on the sale or exchange bears to the fair market value of the entire property at such time. The terms "ordinary income" and "long-term capital gain", as used in this section, have the same meaning as they have in paragraph (a) of § 1.170A–4. For determining the portion of the adjusted basis, ordinary income, and long-term capital gain allocated to the contributed portion of the property for purposes of applying section 170(e)(1) and paragraph (a) of § 1.170A–4 to the contributed portion of the property, and for determining the donee's basis in such contributed portion, see paragraph (c)(2) and (4) of § 1.170A–4. For determining the holding period of such contributed portion, see section 1223(2) and the regulations thereunder.

(c) *Illustrations.* The application of this section may be illustrated by the following examples, which are supplemented by other examples in paragraph (d) of § 1.170A–4:

Example (1). In 1970, A, a calendar-year individual taxpayer, sells to a church for $4,000 stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. Thus, A makes a charitable contribution to the church of $6,000 ($10,000 value − $4,000 amount realized). Without regard to this section, A is allowed a deduction under section 170 of $6,000 for his charitable contribution to the church, since there is no reduction under section 170(e)(1) with respect to the long-term capital gain. Accordingly, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized/$10,000 value of property). A has recognized long-term capital gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale.

Example (2). The facts are the same as in example (1) except that A also makes a charitable contribution in 1970 of $50,000 cash to the church. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church; however, the $6,000 contribution of property is carried over to 1971 under section 170(d). Under paragraphs (a)(2) and (b) of this section the adjusted basis for determining gain for 1970 on the bargain sale in that year is $1,600 ($4,000 × $4,000/$10,000). A has a recognized long-term capital gain for 1970 of $2.400 ($4,000 − $1,600) on the sale.

Example (3). In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of $50,000 cash to a church. In addition, he sells for $4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution of $6,000 of such property to the private foundation ($10,000 value − $4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii), applied without regard to section 1011(b), the $6,000 contribution of stock is reduced to $3,000 ($6,000 − [50% × ($10,000 value of stock − $4,000 adjusted basis)]). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of $3,000 to the private foundation. Accordingly, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the private foundation, and under § 1.1001–1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized − $4,000 adjusted basis).

Example (4). In 1970, B, a calendar-year individual taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. B's contribution

base for 1970, as defined in section 170(b)(1)(F), is $20,000 and during such year B makes no other charitable contributions. Thus, he makes a charitable contribution to the church of $8,000 ($10,000 value −$2,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 of $2,000 ($8,000 −[$10,000 value−$4,000 adjusted basis]) for his charitable contribution of $8,000 to the church, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $800 ($4,000 adjusted basis ×$2,000 amount realized/$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $1,200 ($2,000 amount realized −$800 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A–4, B is allowed a charitable contributions deduction for 1970 of $3,200 ($8,000 value of gift −[$8,000−($4,000 adjusted basis of property ×$8,000 value of gift/$10,000 value of property)]).

Example (5). The facts are the same as in Example (4) except that B sells the property to the church for $4,000. Thus, B makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 for 1970 of $0 ($6,000−[$10,000 value−$4,000 adjusted basis]) under section 170, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the property, and under § 1.1001–1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized −$4,000 adjusted basis).

Example (6). The facts are the same as in Example (4) except that B sells the property to the church for $6,000. Thus, B makes a charitable contribution to the church of $4,000 ($10,000 value −$6,000 amount realized). Since without regard to this section B is allowed a deduction under section 170 for 1970 of $0 ($4,000 gift −[$10,000 value of property −$4,000 adjusted basis]), paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the property, and under § 1.1001–1(e) the recognized short-term capital gain on the bargain sale is $2,000 ($6,000 amount realized −$4,000 adjusted basis).

Example (7). In 1970, C, a calendar-year individual taxpayer, sells to a church for $4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 value−$4,000 adjusted basis) would have been treated as ordinary income. Thus, there would have been long-term capital gain of $2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.-170A–4. Since without regard to this section C is allowed a deduction under section 170 of $2,000 ($6,000 gift −$4,000 ordinary income), under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis ×$4,000 amount realized/$10,000 value of property). Accordingly, C has a recognized gain of $2,400 ($4,000 amount realized −$1,600 adjusted basis) on the bargain sale, consisting of ordinary income of $1,600 ($4,000 ordinary income ×$4,000 amount realized/$10,000 value of property) and of long-term capital gain of $800 ($2,000 long-term gain ×$4,000 amount realized/$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A–4, C is allowed a charitable contributions deduction for 1970 of $3,600 ($6,000 gift −[$4,000 ordinary income ×$6,000 value of gift/$10,000 value of property]).

Example (8). (a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a nonassignable annuity of $5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of $100,000 and an adjusted basis to A of $20,000.

(b) The present value of the right of a male age 65 to receive a life annuity of $5,000 per annum, payable in equal installments at the end of each monthly period, is $59,755 ($5,000×[11.469+0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101–2, and section 3 of Rev. Rul. 62–216, C.B. 1962–2, 30. Thus, A makes a charitable contribution to the church of $40,245 ($100,000−$59,755). Without regard to this section, A is allowed a deduction under section 170 of $40,245 for his charitable contribution to the church, since the property contributed is not section 170(e) capital gain property within the meaning of paragraph (b)(3) of § 1.170A–4 and no reduction of the contribution is made under section 170(e)(1).

(c) Under paragraph (b) of this section, the adjusted basis for determining gain on the bargain sale is $11,951 ($20,000×$59,755/$100,000). Accordingly, A has a recognized long-term capital gain of $47,804 ($59,755–$11,951) on the bargain sale. Such gain is to be reported by A ratably over the period of years measured by the expected return multiple under the contract, but only from that portion of the annual payments which is a return of his investment in the contract under section 72 of the Code. For such purposes, the investment in the contract is $59,755, that is, the present value of the annuity.

(d) The computation and application of the exclusion ratio, the gain, and the ordinary annuity income are as follows, determined by using the expected return multiple of 15.0 applicable under Table I of § 1.72–9:

A's expected return (annual payments of $5,000×15)	$75,000.00
Exclusion ratio ($59,755 investment in contract divided by expected return of $75,000)	79.7%
Annual exclusion (annual payments of $5,000×79.7%)	$3,985.00
Ordinary annuity income ($5,000−$3,985)	$1,015.00
Long-term capital gain per year ($47,804/15) with respect to the annual exclusion	$3,186.93

(e) The exclusion ratio of 79.7 percent applies throughout the life of the contract. During the first 15 years of the annuity, A is required to report ordinary income of $1,015 and long-term capital gain of $3,186.93 with respect to the annuity payments he receives. After the total long-term capital gain of $47,804 has been reported by A, he is required to report only ordinary income of $1,015.00 per annum with respect to the annuity payments he receives.

(d) *Effective date.* This section applies only to sales and exchanges made after December 19, 1969.

PAR. 18. Section 1.1012–2 is revised to read as follows:

§ 1.1012–2 Transfers in part a sale and in part a gift.

For rules relating to basis of property acquired in a transfer which is in part a gift and in part a sale, see § 1.170A–4(c), § 1.1011–2(b), and § 1.1015–4.

PAR. 19. Section 1.1015–4 is amended by revising that part of paragraph (a) which follows subparagraph (2) thereof to read as follows:

§ 1.1015–4 Transfers in part a gift and in part a sale.

(a) *General rule.* * * *

For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor, see § 1.1001–1(e) and § 1.1011–2. For special rule where there has been a charitable contribution of less than a taxpayer's entire interest in property, see section 170(e)(2) and § 1.170A–4(c).

PAR. 20. Section 1.1245–4 is amended by revising paragraph (a)(1) to read as follows:

§ 1.1245–4 Exceptions and limitations.

(a) *Exception for gifts*—(1) *General rule.* Section 1245(b)(1) provides that no gain shall be recognized under section 1245(a)(1) upon a disposition by gift. For purposes of this paragraph, the term "gift" means, except to the extent that subparagraph (3) of this paragraph applies, a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1015 (a) or (d) (relating to basis of property acquired by gifts). For reduction in amount of charitable contribution in case of a gift of section 1245 property, see section 170(e) and the regulations thereunder.

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[T.D. 7209]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Appreciated Property Used To Redeem Stock

On May 20, 1971, there was published in the FEDERAL REGISTER (36 F.R. 9138) a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 311(d) of the Internal Revenue Code of 1954, relating to appreciated property used to redeem stock, as added by section 905 of the Tax Reform Act of 1969 (Public Law 91–172). After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the amendment to the regulations as proposed is hereby adopted, subject to the changes set forth below: